

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7106

United States Court of Appeals
FOR THE SECOND CIRCUIT

MACAULEY WHITING,
Plaintiff-Appellant,
against

THE DOW CHEMICAL COMPANY,
Defendant-Appellee.

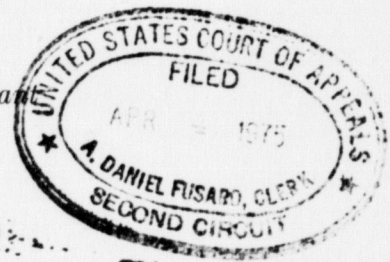
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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JOINT APPENDIX TO BRIEFS

TABLE OF CONTENTS

	PAGE
Docket Entries	A1
Complaint	A4
Answer and Counterclaim	A7
Reply to Counterclaim	A8
Pretrial Order, ¶¶ 3-10 (Stipulated Facts)	A9
Excerpts from Transcript of Proceedings held before Ward, D. J.	A11
Plaintiff's Trial Exhibit 1: Memorandum of W. A. Groening, Jr. to Macauley Whiting, <i>et al.</i> , dated 10/6/65	A74
Plaintiff's Trial Exhibit 2: Memorandum of W. A. Groening, Jr. to Macauley Whiting, <i>et al.</i> , dated 5/27/66	A76
Plaintiff's Trial Exhibit 3: Memorandum of W. A. Groening, Jr. to Macauley Whiting, <i>et al.</i> , dated 6/18/68	A78
Plaintiff's Trial Exhibit 4: Memorandum of W. A. Groening, Jr. to Macauley Whiting, <i>et al.</i> , dated 3/27/69	A80
Plaintiff's Trial Exhibit 15: Pages 1 and 2 of the monthly statement from Smith, Barney & Co., Inc. for the brokerage account of Helen Dow Whiting, account no. 50 782343 1, for the period ending 12/31/73	A82
Defendant's Supplement to Plaintiff's Trial Exhibit 15: Smith, Barney & Co. statement for account of Helen Dow Whiting, 8/31/73-12/31/73	A84

	PAGE
Plaintiff's Trial Exhibit 17: Handwritten notes by Macauley Whiting about a telephone conversation between Macauley Whiting and Allan Penwell of Harris Trust & Savings Bank	A86
Plaintiff's Trial Exhibit 23: Letter dated November 18 [1973], from Macauley Whiting to Allan [Penwell]	A88
Defendant's Trial Exhibit C: Macauley Whiting's SEC Forms 4 (Sept., Nov., Dec., 1973)	A90
Defendant's Trial Exhibit G: Excerpts from the Deposition of Dow Chemical Company by William A. Groening, taken by plaintiff on 9/26/74..	A92
Defendant's Trial Exhibit G-5: Memorandum of W. A. Groening, Jr. to Macauley Whiting, <i>et al.</i> , dated 4/27/72	A94
Defendant's Trial Exhibit H: Letter from Macauley Whiting to Mr. Freedman, dated 10/6/57	A96
Defendant's Trial Exhibit I: Freedman diary of communications re: Whittings, 10/17/57-11/27/72 ..	A98
Defendant's Trial Exhibit J: Letter [from Joseph Freedman] to Helen Dow Whiting, dated 11/10/70	A100
Defendant's Trial Exhibit K: Letter [from Joseph Freedman] to Mrs. Macauley Whiting, dated 5/14/71 (with handwritten attachment)	A102
Defendant's Trial Exhibit L: Letter of Kent Noel Farr to Joseph Freedman, dated 1/28/72	A104
Defendant's Trial Exhibit M: Letter [from Joseph Freedman] to Helen D. Whiting, dated 11/28/69..	A106
Defendant's Trial Exhibit N: Letter from Macauley Whiting to Joseph Freedman, dated 8/29/72 ...	A108

TABLE OF CONTENTS

iii

	PAGE
Defendant's Trial Exhibit O: Memorandum of C. B. Branch to Macauley Whiting, <i>et al.</i> , dated 3/30/72	A110
Defendant's Trial Exhibit P: Letter from Macauley Whiting to Paul R. Orefice, dated 4/26/72	A112
Defendant's Trial Exhibit S: Stanley Goldstein & Company: Conference report, dated 12/8/72 ...	A114
Defendant's Trial Exhibit T: Stanley Goldstein & Company: Conference report, dated 5/31/73 ...	A116
Defendant's Trial Exhibit U: Goldstein, Golub, Kessler & Company: Conference report, dated 10/29/73	A118
Defendant's Trial Exhibit W: Checks of Macauley Whiting and Helen Dow Whiting, dated 12/27/73	A120
Defendant's Trial Exhibit X: Note by Macauley Whiting to the order of Helen Dow Whiting, dated 12/27/73; memorandum from Macauley Whiting to Helen D. Whiting, dated 5/11/74	A122
Defendant's Trial Exhibit DD: "Partial Schedule of Income for Helen Dow Whiting (from joint federal income tax return)," 1971-1973	A124
Defendant's Trial Exhibit EE: "Partial Schedule of Income for Macauley Whiting (from joint federal income tax return)," 1971-1973	A126
Defendant's Trial Exhibit FF: "Schedule of Gifts Reported by Helen Dow Whiting (January 1, 1971 to December 31, 1973)"	A128
Defendant's Trial Exhibit GG: Letter [from Joseph Freedman] to Helen Dow Whiting, dated 2/8/72	A130

	PAGE
Defendant's Trial Exhibit HH: Letter [from Joseph Freedman] to Helen Dow Whiting, dated 7/12/71 (with handwritten attachment)	A132
Defendant's Trial Exhibit II: Letter from Macauley Whiting to Bill Cotter, dated 9/1-	A134
Defendant's Trial Exhibit JJ: Excerpt from the Continued Deposition of Macauley Whiting, taken by defendant on 8/8/74	A136
Defendant's Trial Exhibit LL: Excerpts from the Deposition of Mark V. Rickabaugh, taken by defendant on 9/4/74	A137
Defendant's Trial Exhibit MM-31: Letter from "Helen" [Dow Whiting] to "Joe" [Freedman] marked "rec'd 11/18/72"	A140
Defendant's Trial Exhibit NN: Excerpts from the Deposition of Helen Dow Whiting, taken by defendant on 8/9/74	A142
Memorandum Opinion of Ward, D. J.	A147
Final Judgment	A163

Docket Entries.

DATE	PROCEEDINGS
Apr 29 74	Filed complaint & issued summons.
May 14.74	Filed Stip & Order that the time for deft. to answer is extended to 6/21/74. Ward J.
May 13.74	Files Summons and marshals ret. Served: Dow Chemical Co., on 5/1/74.
May 13.74	Filed Deft. Notice of Appearance. (mailed rule 3 & 4).
Jun 18.74	Filed ANSWER & Counterclaim.
Jun 28-74	PRE-TRIAL CONFERENCE HELD BY Ward.
Jul 8.74	Filed Pltffs. Reply to Counterclaim in defts. answer.
Jul 29.74	Filed Order & Stip. regarding discovery & in lieu of notice to take depositions of Pltffs. Macauley Whiting & his wife Helen Whiting, etc. & deposition of Stuart Kessler on dates as indicated. So ordered Ward J.
Aug 16.74	Filed Affidavit of Service by Stephen F. Black on 8/13/74.
Aug 16.74	Filed Defts. Notice of deposition of Mark Rickabaugh, Smith Barney & Co. on 9/4/74.
Aug 16.74	Filed Defts. Notice of deposition of Joseph Freedman on 9/14/74.
Sep. 9-74	Filed stip & order-pltff. may without notice take the deposition of deft. Deft. will produce documents—Ward, J.
Oct. 4-74	Filed pltff's marked pleadings.
Oct. 4-74	Filed pre-trial order—Ward, J.—consented to.
Oct 4-67	Filed pltff's trial memorandum
Oct. 10-74	Filed deposition of Dow Chemical Co. Mailed notices.

Docket Entries.

DATE	PROCEEDINGS
Oct. 10-74	Filed corrections to the deposition of Macauley Whiting. Mailed notices.
Oct. 10-74	Filed deposition of Macauley Whiting. Mailed notices.
Oct. 10-74	Filed deposition of Stuart Kessler. Mailed notices.
Oct. 10-74	Filed deposition of Stuart Kessler. Mailed notices.
Oct. 10-74	Filed deposition of Mark K. Rickabaugh. Mailed notices.
Oct. 10-74	Filed deposition of Joseph Freedman. Mailed notices.
Oct. 10-74	Filed deposition of Helen Dow Whiting. Mailed notices.
Oct. 10-74	Filed affdvt of Helen Dow Whiting.
Oct. 11-74	Filed amendment to pretrial order—Ward, J.—consented to.
Oct. 11-74	Filed pltff's memorandum in opposition to production of income & gift tax returns.
Oct. 11-74	Filed deft's trial memorandum.
Oct. 11-74	Filed pltff's trial memorandum.
Oct. 7-74	Before Ward, J.—Non-Jury trial begun.
Oct. 8-74	Trial Cont'd.
Oct. 9-74	Trial Cont'd.
Oct. 10-74	Trial Cont'd and concluded. Decision Reserved.
Oct. 25.74	Filed Affidavit by William A. Groening of Correction of deposition.
Nov. 6.74	Filed Deft's. Post Trial Memorandum.
Nov. 6.74	Filed Pltffs. Post Trial Memorandum.

Docket Entries.

DATE	PROCEEDINGS
Nov. 11.74	Filed transcript of record of proceedings, dated 10-7, 8, 9, 10, 1974.
Dec 24.74	Filed Opinion #41625. Ordered the foregoing constitutes the findings of fact & conclusions of law of the court for purposes of Rule 52 FRCP. Settle Judgment on notice. Ward J. (mailed notice).
Jan 2.74	Filed Pltffs. Memorandum in support of his proposed form of final Judgment.
Jan 2.74	Filed Pltffs. Designation of Trial Exhibits. So ordered Ward J.
Jan 2.74	Filed Stip & Order that this action may be opened for the purpose of offering into evidence the following specified documents as indicated. So Ordered. Ward J.
Jan 6.75	Filed Final Judgment #75,020. Ordered that deft. Dow Chemical Co., recover of pltff. on its counterclaim the sum of \$208,203.80, without interest, & that deft. recover of pltff. the costs of the action. Ward J.— Judgment Entered 1-7-75. Clerk, Entered 1/9/75 (mailed notice) (complaint dismissed).
Jan 29.75	Filed Bill of Costs in the sum of \$3,556.23. in favor of the deft. as against pltff. & added to the judgment. Clerk.
Feb 4.75	Filed pltffs. notice of appeal from order dtd. 1/7/75 (Final Judgment) (mailed notice).
Mar 5.75	Filed Stipulation Designating Exhibits.

Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ.

MACAULEY WHITING,

Plaintiff,

against

DOW CHEMICAL COMPANY,

Defendant.

Plaintiff Macauley Whiting, by his attorneys Dewey, Ballantine, Bushby, Palmer & Wood, for his Complaint in this action, alleges the following:

1. This action is brought to determine a controversy arising under Section 16(b) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. § 78p(b), and this court has jurisdiction under that Section and under Section 27 of said Act, 15 U.S.C. § 78aa.

2. This is an action for a declaratory judgment pursuant to 28 U.S.C. § 2201, for the purpose of determining a question of actual controversy between the parties, as fully set forth below.

3. At all times relevant to the Complaint in this action, plaintiff Macauley Whiting was a director of defendant Dow Chemical Company ("Dow").

4. At all times relevant to the Complaint in this action, the common stock of Dow was an equity security registered

Complaint.

and traded on the New York Stock Exchange, Inc., a national securities exchange, and was not an exempted security within the meaning of Section 3(a)(12) of the 1934 Act, 15 U.S.C. § 78c(a)(12).

5. On December 27, 1973, Macauley Whiting exercised an option granted to him by Dow to purchase 21,420 shares of the common stock of Dow at an aggregate option price of \$520,774.

6. Macauley Whiting did not purchase or sell any securities of Dow, other than those described in Paragraph 5 of this Complaint, during the six months prior to the exercise of the option in question on December 27, 1973; nor has he purchased or sold any securities of Dow from December 27, 1973, to the date of this Complaint.

7. During the six months prior to the exercise of this option by Macauley Whiting, his wife Helen Whiting sold a total of 29,770 shares of the common stock of Dow at various prices.

8. Helen Whiting did not purchase or sell any securities of Dow, other than those described in Paragraph 7 of this Complaint, during the six months prior to the exercise by Macauley Whiting of his stock option on December 27, 1973; nor has Helen Whiting purchased or sold any securities of Dow from that date to the date of this Complaint.

9. In a proxy statement issued to its shareholders on March 22, 1974, Dow asserted that Macauley Whiting's exercise of his option to purchase the common stock of Dow and Helen Whiting's sales of her common stock of Dow may have resulted in the liability of Macauley Whiting to Dow under Section 16(b) of the 1934 Act and

Complaint.

that Dow may submit this question to a court for resolution.

10. Dow has advised Macauley Whiting that, pursuant to Section 16(b) of the 1934 Act and Rule 16b-6, Dow must receive a payment based on Macauley Whiting's exercise of his option and Helen Whiting's applicable sales.

WHEREFORE, plaintiff Macauley Whiting demands declaratory judgment pursuant to 28 U.S.C. § 2201 that he is not liable to defendant Dow Chemical Company for any amount under Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b).

Dated: New York, New York, April 29, 1974.

DEWEY, BALLANTINE, BUSHBY, PALMER
& WOOD

By /s/ RUSSEL H. BEATIE, JR.
A member of the firm
Attorneys for Plaintiff
Macauley Whiting

Answer and Counterclaim.

[S A M E T I T L E]

Defendant, THE DOW CHEMICAL COMPANY, by its attorneys Wilmer, Cutler & Pickering, for its Answer in this action, says the following:

1. Admits the allegations of paragraphs 1 through 5, 7, 9, and 10 of the Complaint.
2. Admits on information and belief the allegations of paragraphs 6 and 8 of the Complaint.
3. Denies that plaintiff is entitled to the relief prayed for in the Complaint.

COUNTERCLAIM

By way of a counterclaim against plaintiff, defendant alleges the following:

1. The allegations of paragraphs 1 through 10 of the Complaint are hereby incorporated by reference.
2. Plaintiff was a beneficial owner of the 29,770 shares of the common stock of defendant sold by plaintiff's wife, Helen Whiting, as described in paragraph 7 of the Complaint.

WHEREFORE, defendant demands judgment against plaintiff, pursuant to Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b), in the amount of the profits realized on the purchases and sales described in paragraphs 5 and 7 of the Complaint.

WILMER, CUTLER & PICKERING
By

A Member of the Firm
Attorneys for Defendant

THE DOW CHEMICAL COMPANY

Of Counsel:

Paul R. Grand
Poletti, Friedin, Prashker,
Feldman & Gartner

Dated: June 13, 1974

Reply to Counterclaim.

[S A M E T I T L E]

Plaintiff Macauley Whiting, by his attorneys, Dewey, Ballantine, Bushby, Palmer & Wood, for his Reply to the Counterclaim set forth in the defendant's Answer in this action, says the following:

1. Admits the allegations incorporated by reference in paragraph 1 of defendant's Counterclaim.
2. Denies the allegation contained in paragraph 2 of defendant's Counterclaim.

AFFIRMATIVE DEFENSE

For his affirmative defense to defendant's Counterclaim, plaintiff alleges that the Counterclaim fails to state a claim for which relief can be granted.

WHEREFORE, plaintiff Macauley Whiting demands judgment dismissing defendant's Counterclaim and awarding the relief sought in his Complaint.

Dated: New York, New York, July 8, 1974.

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD

By RUSSEL H. BEATIE, JR.

(a member of the firm)

Attorneys for Plaintiff Macauley Whiting

Pretrial Order.

[SAME TITLE]

* * *

STIPULATED FACTS

3. The parties stipulated that the following facts are not in dispute in this action. Each party reserves the right to object to the materiality of these stipulated facts and their relevancy to the issues.
4. Plaintiff Macauley Whiting ("plaintiff") has continuously been a director of defendant The Dow Chemical Company ("defendant") since 1959.
5. Plaintiff has been continuously married to Helen Dow Whiting ("Mrs. Whiting") since 1945. Plaintiff and Mrs. Whiting have six children and maintain a common marital residence in Midland, Michigan.
6. At all times relevant to this action, the common stock of defendant was an equity security registered and traded on the New York Stock Exchange, Inc., a national securities exchange, and was not an exempted security under the meaning of Section 3(a)(12) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. § 78c(a)(12).
7. During the six months prior to December 27, 1973, Helen Dow Whiting sold the following quantities of the common stock of Dow on the dates specified:

Pretrial Order.

<i>Trade Date</i>	<i>No. of Shares Sold</i>	<i>Net Proceeds</i>
September 17, 1973	2,000	\$113,249.72
September 18, 1973	2,700	151,812.27
September 18, 1973	5,300	298,001.88
November 6, 1973	200	11,251.49
November 6, 1973	3,000	169,897.38
November 6, 1973	1,800	101,038.44
November 6, 1973	500	28,441.43
November 7, 1973	800	45,696.84
November 7, 1973	3,700	212,272.65
November 13, 1973	1,300	71,338.35
November 13, 1973	1,700	92,438.86
November 13, 1973	800	43,900.63
November 13, 1973	70	3,844.35
November 30, 1973	5,800	296,738.26
November 30, 1973	100	5,141.03
	<hr/> 29,770	<hr/> \$1,645,063.58

8. On June 10, 1969, plaintiff was granted an option by defendant for the purchase of 7,140 shares of common stock in defendant at a price of \$72.9375 per share. The option would have expired if not exercised prior to June 10, 1974.

9. Because of later stock splits, the shares covered by plaintiff's option increased to 21,420 shares at an exercise price of \$24.3125 per share.

10. On December 27, 1973 plaintiff exercised his option to purchase 21,420 shares of common stock in defendant at an aggregate option price of \$520,774.00.

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Excerpts From Transcript of Proceedings.

[S A M E T I T L E]

Before: HON. ROBERT J. WARD, District Judge.

New York, October 7, 1974;
10:00 o'clock a. m.

APPEARANCES:

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD, Esqs., Attorneys for Plaintiff; Russel H. Beatie, Jr., Esq., and Brendan Bovaird, Esq., of Counsel.

WILMER, CUTLER & PICKERING, Esqs., Attorneys for Defendant; Arthur F. Mathews, Esq., and Stephen F. Black, Esq., of Counsel.

(30) MACAULEY WHITING, called as a witness, being first duly sworn, testified as follows:

* * * * *

(53) * * * Cross Examination by Mr. Mathews:

Q. Mr. Whiting, your wife, Helen, owns a large block of Dow stock, is that correct? A. Yes.

Q. Do you know generally either the approximate dollar amount or the approximate number of shares that the block of Dow in her name was let's say throughout the 1960's? Can you give a ballpark figure? A. The figure of \$20,000-000 was mentioned in the courtroom this morning. I don't know anything wrong with that.

* * * * *

(56) Q. Do you file a joint income tax return? A. Yes.

Macaul Whiting—for Plaintiff—Cross.

Q. For how long have you filed jointly with your wife?

A. To the best of my recollection, ever since we were married.

Q. Since approximately 1945? A. Yes.

Q. Is it fair to say, Mr. Whiting, that in each of the years since 1945 during which you filed joint returns that the substantial portion of your joint income was attributable to your wife? A. There were some years when that was probably not true.

Q. Would that have been the early years from 1945 to 1949? Before your wife inherited the major block of Dow stock? A. Yes.

Q. You admit that since 1949, upon the death of your wife's parents, that the major portion of your joint income derived indeed from your wife's Dow Chemical stockholdings, wouldn't you? A. That's true.

Q. And during the 1940s, and let us say up through (57) 1957, the major portion of such joint income would have been from dividends that were received upon the Dow stock in your wife's name, is that not correct? A. In most years.

Q. It is true, is it not, that your wife did not sell any of her Dow stock so far as you know prior to 1957? A. Yes.

.

(65) . . . Q. Mr. Whiting, Exhibit A lists the marital home at 2203 Eastman Road, Midland, Michigan. Is that correct? A. Yes.

Q. The exhibit shows a cost of \$300,000, Mr. Whiting. I believe your previous testimony was \$100,000. Would you agree that the cost of the home was \$300,000, approximately? A. Mr. Mathews, the question implies I misstated that. The original question was the original cost of the home and (66) the original cost was \$100,000. I admitted to substantial subsequent improvements on the home, and the eventual final cost of the building was \$300,000 as stated.

.

Macaulay Whiting—for Plaintiff—Cross.

(68) Q. Now, your wife paid for the building and the improvement; is that correct? A. Yes.

Q. Is it not true that the principal source of funds that she used both for the building and the house initially and for the improvements have been the income generated by her Dow stock? A. To the extent that her income was generated from that source, yes.

Q. And is it not true that her primary source of income from 1948 to the present has been her Dow stock? A. Yes.

Q. Now, I take it that anything spent on the house prior to 1957 would have come from Dow dividends, as opposed to capital gains from the sale of Dow stock; is that correct? A. Prior to 1957—

Q. 1957. A. I believe a substantial part of the funds came from loans that Mrs. Whiting made.

Q. And the loans she made at the Harris Bank? A. I don't recall where the specific—where those loans came from.

Q. She repaid the loans at some point? A. Yes.

(69) Q. She repaid them primarily from her dividends or Dow capital gains? A. Yes.

Q. Do you recall the procedure that was utilized to pay the contractor when the home was built? A. Generally, yes.

Q. Did not you and your wife set up a joint checking account specifically to pay the contractor? A. Yes.

Q. And you wrote the checks, did you not? A. Yes.

Q. Money came from your wife, went into the joint checking account, and then you disbursed the funds to the contractor; is that right? A. Yes.

Q. Now, did you handle some of the improvements in the same fashion? A. Yes.

Q. Did you handle most of the improvements in the same fashion? A. I'm not sure when we stopped using that procedure and adopted a different procedure, but there were

Macauley Whiting—for Plaintiff—Cross.

several improvements—several improvements were handled that way.

Q. You used that procedure over a period of years? (70)

A. Yes.

Q. Has there been an established practice throughout your marriage as to who pays the real estate taxes on the home? A. I don't believe there has been one established practice.

Q. Well, who pays the taxes presently on the home? A. Mrs. Whiting does.

Q. And for how long has she paid the real estate taxes on the home from her funds? A. Several years. Many years.

* * *

(75) * * * Q. Has there been a pattern throughout your marriage with respect to who pays for your wife's clothes?

A. She pays for her clothes.

* * *

(76) * * * Q. Has there been a pattern throughout your marriage as to who pays for the children's clothes, who has paid for the children's clothes? A. Yes.

Q. And what is that? A. Mrs. Whiting pays for that.

Q. Has there been a pattern with respect to who pays for Mrs. Whiting's dental bills? A. Yes.

Q. And what is that? A. She pays.

Q. And what about the children's dental bills? A. Mrs. Whiting pays.

Q. What about your bills, your dental bills, Mr. Whiting, that you have? A. Mrs. Whiting pays, I believe.

Q. Have you and Mrs. Whiting sent each of your children to private schools? A. Yes.

Q. What has been the approximate amount of schooling (77) expenses for the six children during, say, the past five or six years, per year, for tuition and books and related expenses, approximately? A. During the course of these proceedings, a number of \$25,000 per year was mentioned. I have no reason to doubt that that is accurate.

Macauley Whiting—for Plaintiff—Cross.

Q. Who pays this approximately \$25,000 per year for school expenses? A. Mrs. Whiting pays.

Q. The family food bill; is there a pattern in that regard? Who buys the food? Who has bought the food over the years? A. Mrs. Whiting.

Q. Do you have a cook? A. Yes.

Q. Have you had a cook for many years? A. Yes.

Q. Who pays the cook? A. Mrs. Whiting.

Q. She has over the years? A. Yes.

Q. Do you have a maid? A. Yes.

Q. One or more than one? (78) A. One.

Q. Have you had a maid for many years? A. Yes.

Q. Who has paid the maid through these years? A. Mrs. Whiting.

Q. Do you have domestic help to do the laundry? Do you have a laundress to do that work? A. Yes.

Q. Have you had one for many years? A. Yes.

Q. Who has paid for the domestic help for the laundry work? A. Mrs. Whiting.

Q. Who paid the family dry cleaning bills? A. Mrs. Whiting.

Q. Do you have a gardener at the homestead? A. Yes.

Q. Do you have a gardener? A. Yes.

Q. One or more than one? A. One.

Q. Have you had a gardener through the years? A. Yes.

Q. Who has paid the gardener over the years? (79)

A. Mrs. Whiting paid in recent years. When I could afford to, I paid him.

Q. Well, would you say that at least for the past decade or so Mrs. Whiting has paid the gardener? A. Yes.

Q. Do you have several telephones at the home? A. Yes.

Q. Has there been a pattern as to who pays the telephone bills? A. Yes.

Q. Who has paid the telephone bills? A. Mrs. Whiting.

Q. From time to time, do you require that drugs and

Macauley Whiting—for Plaintiff—Cross.

medicines be purchased for you and your wife and your family? A. Yes.

Q. Has there been a pattern as to who pays for the drugs for the family? A. Mrs. Whiting normally pays.

Q. I note that you wear glasses. Do any of the other family members wear glasses? A. Yes.

Q. Are there optometrists' bills and bills from opticians and others for eyeglasses? (80) A. Yes.

Q. Who over the years has paid those bills? A. Mrs. Whiting more often than I, pays them.

Q. Does she not primarily pay them, most of them? A. Yes.

* * * * *

(81) * * * Q. Mr. Whiting, I would like to read to you a question (82) and answer at page 219 of your deposition—or a couple of questions and answers and ask you whether they are correct.

"Q. The medical and dental expenses of Mrs. Whiting, if she has any— A. She pays.

"Q. Any medical and dental expenses of the children? A. She pays."

Q. Now, does Mrs. Whiting pay any medical expenses of the children? A. Yes; I am sure she does.

* * * * *

(88) * * * Q. Mr. Whiting, do you have a swimming pool at your home? A. Yes.

Q. Did your wife pay for the construction of the pool? A. I believe so.

* * * * *

Q. Would you say usually when you ski the family travels to a ski resort or some commercial skiing establishment? A. Yes.

Q. Do you often travel to ski resorts by plane? A. Yes.

Q. And from time to time in doing the family skiing do you take Mrs. Whiting's plane? A. Yes.

Macauley Whiting—for Plaintiff—Cross.

Q. And how long has Mrs. Whiting had a plane?
(89) A. For long enough I can't recall when it first started.

Q. For 20 years? A. Probably not that long.

Q. Some time in the last 1950's or early 1960's, would that be the approximate time? A. Approximate.

Q. You are aware, are you not, that a substantial amount of the payments for the plane came from Mrs. Whiting's income from her Dow stock? A. Yes.

The Court: You changed planes once or twice in twenty years, haven't you?

The Witness: Yes, sir.

The Court: And when you traded in to buy another one, who makes the payments?

The Witness: Mrs. Whiting.

The Court: Do you have a plane, also, or is it just one?

The Witness: There is just one plane.

The Court: Who pays for its maintenance at whatever airstrip you have, or do you have that at your home?

The Witness: No, it is at an airport, and Mrs. (90) Whiting pays for the maintenance.

* * * * *

Q. Who usually flies the family plane? A. A pilot by the name of David Willis.

Q. David Willis? A. Yes.

Q. Is he on the payroll? Is he paid to fly the plane?

A. He is on the payroll of Airflight and Serva-Plane.

Q. That is a corporation, an operating corporation? A. Yes.

Q. Does that corporation charge your family for the service in operating the plane? A. Yes.

Macauley Whiting—for Plaintiff—Cross.

Q. And who pays those charges? A. Mrs. Whiting pays.

* * *

(91) * * * Q. How often do you fly, approximately, per month, in Mrs. Whiting's plane? A. It would be an estimate, but perhaps a couple of times a month.

Q. Two or three times a month? A. Yes.

Q. In addition to skiing trips do you and Mrs. Whiting and perhaps some of the children take vacations from time to time? A. Yes.

Q. Do you travel by airplane on vacations? A. Yes.

Q. And sometimes you use the family plane? A. To a very small extent, yes.

Q. More often than not on a vacation you fly commercial? A. Yes.

Q. Who buys the family commercial airplane tickets when you go on family vacations? (92) A. Normally, Mrs. Whiting.

* * *

(96) * * * The Court: I don't care what she relied on. I want to know from your point of view, with a tax liability in 1973 of a half a million dollars, what was the formula which you and your wife followed, if any, whereby one would pay a portion of that liability and the other would pay the balance?

The Witness: I would pay the amount determined by the withholding from my salary based on no deductions, and (97) no allowance for extra gifts and so forth, and she would pay the balance.

* * *

(103) * * * Q. What sort of computation did you make? A. I made a computation that the zero withholding basis

Macauley Whiting—for Plaintiff—Cross.

would cover the taxes attributable to my salary and other income.

Q. And when was the last time you made such a calculation? A. I don't recall.

Q. Have you made such a calculation in the decade of the '70's? A. I don't recall.

Q. Have you made such a calculation from 1966 to date? A. I don't recall.

Q. Is it not true that you have not made such a calculation for the past ten years? A. I don't recall.

Q. Approximately how much has your salary increased in the past ten years? A. To the best of my recollection, less than double.

Q. You said less than double? A. Less than double, yes.

Q. Would it have gone say from approximately 50,000 to 90,000? A. 50,000 or more to 90,000.

(104) Q. Mr. Whiting, in an attempt to refresh your recollection I shall read from questions and answers from pages 55 and 56 of your deposition given on July 26th in this case:

"Q. Has anyone ever advised you or have you had calculations made to assure that zero withholding, withholding with zero dependents on your salary of a sufficient amount to cover the taxes that would be due on your salary? A. Yes. That calculation has been made.

"Q. Who has made it, when, under what circumstances? A. Specifically, I have made it, many years ago; specifically the woman who is secretary to Mrs. Whiting's father made the calculations.

"Q. That's Mrs. Perry? A. Yes.

"Q. When is the last time you recall that you made such calculation yourself? A. Would be ten years ago, approximately.

"Q. And when is the last time, if you recall, and if you know, that Mrs. Perry made it? A. About the same time."

Macauley Whiting—for Plaintiff—Cross.

Were those answers that you gave correct, to the best of your knowledge? A. Correct, and I believe them to be consistent with what I said this afternoon.

(105) * * * The Court: If any money is required to be paid with a quarterly estimate of taxes due, is that money furnished solely by your wife?

The Witness: Yes.

* * *

(107) * * * Q. Does Michigan have a state income tax? A. Yes.

Q. Do you and your wife file joint Michigan state income tax returns? A. Yes.

Q. Is there any partnership or agreement or understanding as to how whatever taxes that are due to the state of Michigan are accomplished? A. I believe Mrs. Whiting has always paid those taxes.

Q. You have filed a joint return and she's paid the taxes? A. Yes.

The Court: Is there withholding from your Dow salary for state income tax or only federal?

The Witness: Only federal.

* * *

(111) * * * Q. The vacation home in Boyne Falls, Michigan, do you utilize that home from time to time? A. Yes, sir, I do.

Q. That was paid for by Mrs. Whiting? A. Yes.

* * *

(114) * * * Q. Have you ever received a gift of Dow stock? A. Yes.

Q. When was the first gift of Dow stock that you received that you can recall? A. 1945 or 1946.

Macaulay Whiting—for Plaintiff—Cross.

Q. From whom? A. From Mrs. Whiting.

Q. And did you receive subsequent gifts of Dow stock?

A. Yes.

(115) Q. From Mrs. Whiting? A. Yes.

Q. Is it not true that in every year of your marriage since 1945 or 1946 Mrs. Whiting has made a gift of Dow stock to you? A. Certainly in almost every year.

Q. And is it not true that the source of the gifts were Dow stock held in her name that she then gave a portion of to you? A. Yes.

Q. In other words, she didn't go out on the market and buy stock to make a gift to you? A. No.

Q. Now, has there been a pattern over the years from 1945 or 1946 as to the amount of yearly gift of Dow stock from your wife to you? A. It has approached 6,000 that she has given me.

The Court: And I would take note of the fact that that would mean that as long as it was under \$6,000 there would be no gift tax paid. It that the reason for the selection of the number that you have just mentioned?

The Witness: Yes, it was.

Q. That was the specific basis for the gift to you, was to have within the gift tax exclusion applicable to you (116) and your wife, is that not correct? A. Yes.

Q. Now, as to each one of those gifts, it is true, is it not, that the gift was treated as a joint gift in order to allow Mrs. Whiting to take advantage of your annual \$3,000 gift tax exclusion? A. I always thought—she always asked me if she could use my \$3,000 and I said yes, she could.

* * * * *

(117) * * * Q. Mr. Whiting, to your knowledge, has your wife made gifts of her stock to the children over the years? A. Yes, she has.

Macauley Whiting—for Plaintiff—Cross.

Q. To each one of them? A. Yes.

(118) Q. Did she also make gifts of her Dow stock to individual trusts set up for each of the six children? A. Yes and no. Yes, she did, and no, not over the years.

Q. When did she do so? A. She set up the trusts for the children after the death of her grandmother. That would be approximately 1956.

* * * * *

Q. Were you the trustee of each one of the trusts? (119)

A. Yes.

Q. Are you still the trustee of those that are still active—

A. Yes.

The Court: Are you the sole trustee or do you share that with some bank or other trustee?

The Witness: I am the sole trustee.

Q. Have you always been the sole trustee since the trusts were set up? A. Yes.

* * * * *

(120) * * * Q. Now, I'm trying to get in the record a picture of the Dow holdings of the immediate family, you, your wife, and the children. Your wife's Dow stock which she inherited, your stock in your name, gifts from your wife, and then the exercise of your option, gifts from your wife to the children in trust for the children.

Now, were there any other areas of the management of the financial affairs of your wife, you, and your immediate family, where Dow stock was involved? A. There was no other Dow stock by members of the (121) family.

Q. What about the Macauley and Helen Whiting Family Foundation? A. I didn't include that in the definition.

Q. You and your wife started a family charitable foundation at one point, did you not? A. Yes.

Macauley Whiting—for Plaintiff—Cross.

Q. Is that the correct title of it, the Macauley and Helen Whiting Foundation? A. I think it is the Macauley and Helen Dow Whiting Foundation.

Q. Is that foundation still in existence? A. Yes.

Q. You and your wife are the sole trustees? A. Not currently.

Q. Who are the trustees currently? A. My wife, my daughter Mary, and I.

Q. Did your daughter Mary become a trustee recently? A. Yes.

Q. In 1974? A. Yes.

Q. Prior to 1974, were the trustees just you and your wife? A. No.

(122) Q. For some time period were you and your wife the only trustees? A. For a few months.

Q. Who were the other trustees, if any? A. The other trustee was N. S. Channin.

Q. And he was a trustee from the start of the foundation? A. Yes.

Q. Until when? A. Until his death early this year.

Q. Mr. Channin had been an attorney-advisor to Willard Dow? A. Yes.

Q. And thereafter both you and your wife from time to time received legal consultation, legal advice, from Mr. Channin respecting your estate? A. Yes.

Q. I take it the contributions to the family foundation were contributions of Dow stock in the name of your wife, is that correct? A. Yes.

* * * * *

(127) * * * May I have Plaintiff's Exhibit 2?

The Court: That is the May 22, 1966—

Mr. Mathews: The Greening, general counsel memo to, among others, Mr. Whiting.

Q. I believe you stated, Mr. Whiting, that you received

Macauley Whiting—for Plaintiff—Cross.

this memorandum and read it at or about the date therein.
A. Yes.

Q. So you were apprised, at or about May 1966, that specifically there was a procedure whereby an officer or a director could disclaim on his ownership reports any beneficial interest in the stock being reported in the name of his spouse.

Mr. Beatie: Objection, your Honor. The document speaks for itself.

The Court: Well, your objection is well taken. I will accept what the document says.

Q. Mr. Whiting, have you ever disclaimed in SEC ownership form reports a beneficial interest in your wife's Dow stock? A. Not to my recollection.

Q. As a director, do you read the Dow registration (128) statements and proxy statements, proxy materials that are filed with the SEC from time to time? A. Yes.

Q. You are aware that in the Dow proxy materials filed with the SEC over the years your wife's securities have been included along with yours as being attributable to you? A. Yes.

Q. And I take it you have never taken any positive step to disclaim with regard to the Dow proxy materials any beneficial ownership in your wife's shares that have been reported. A. That's right. I was never advised that I could do that.

Q. From time to time, do you and your wife make charitable contributions?

The Court: Just a moment. I am a little confused.

(To the witness:) You said you were never advised that you could do that, and yet you have indi-

Macauley Whiting—for Plaintiff—Cross.

cated that you did see and read and put in your own file Plaintiff's Exhibit 2.

The Witness: Yes, sir, but I didn't understand—I understood that exhibit to refer to the 16(a) provision relating to the SEC 4 form, and I didn't really understand it (129) relating to the 16(b), and I really didn't understand it as relating to the proxy statement.

The Court: And you never asked Mr. Greening or any other company counsel to explain it to you?

The Witness: That's right. I wasn't—I wasn't really aware that it could be done, that anybody disclaimed beneficial ownership in proxy statements up until this issue came to light.

* * * * *

(150) * * * Q. Mr. Whiting, are you aware that in addition to your annual gift tax exclusion of \$3,000 per person, that under the applicable laws you have what is called a lifetime gift tax exclusion. A. Yes.

Q. I believe that lifetime exclusion is \$30,000? Are you aware of that? A. Yes.

Q. Did you have discussions with Mrs. Whiting concerning the subject of Mrs. Whiting utilizing your lifetime gift tax exclusion to cover gifts of Dow stock in her name that she made? A. I presume I must have, although I have no recollection of the discussion.

Q. Insofar as you know, was your lifetime exclusion used to cover gifts of Dow stock in Mrs. Whiting's name? A. Yes.

* * * * *

(151) * * * Q. Through the years from '45, let us say, until the end of the '60s, up until 1970, where physically was the Dow stock in the name of yourself, your wife, your children, your children's trust and the family foundation kept?

Macauley Whiting—for Plaintiff—Cross.

A. While I never saw it, I understand it was in the vault of the Dow Chemical Company.

Q. Is it not true that Mrs. Perry accounted for the physical custody of the certificates of each of your immediate family members and of the foundation and children's trust? A. Yes.

Q. And the stock was kept all together in the vault at the company headquarters where you were employed? A. To the best of my knowledge, yes.

Q. Mrs. Perry retired a few years ago? A. Yes, she did.

Q. What happened to the stock, physically, after Mrs. Perry's retirement? A. I understand Mrs. Whiting took custody of the stock and placed it in a safety deposit box at the First National Bank in Midland, Michigan.

Q. She took custody of the stock in her name—at least in part, the stock in her name she took custody of, (152) is that correct? A. Do you mean the stock that belongs to her she took custody of?

The Court: What stock did she take custody is what he wants to know, and I would like to know too.

A. To the best of my knowledge, she took custody of stock belonging to herself, to me, to the children, to the trusts she had established for the children, to the trusts established by Susan for herself, and for the foundation.

The Court: When did she do this?

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The Witness: '71. Excuse me, '71.

Q. She kept all the stock thereafter together in the safety deposit box at the bank in Midland? A. That's what she said she did.

Macauley Whiting—for Plaintiff—Cross.

Q. That was a joint safe deposit box that both you and Mrs. Whiting had access to, is that not correct? A. As I understand it, the safety deposit box is in her name but I have access to it as well.

The Court: You are what might be called a deputy. I think the banks use that expression. That is a person who (153) can go in by himself, sign a card on either put things in or take things out of the box without being accompanied by the owner of the box, the record owner of the box?

The Witness: Yes, sir, that's the way I understand it.

* * * * *

Q. Do you recall a corporation called Ware Corporation? A. Yes.

Q. Ware Corporation was a subchapter Z corporation pursuing development of some properties, is that correct? A. Yes.

Q. Your wife was the largest shareholder of that corporation? A. Yes.

* * * * *

Q. Approximately how much stock in Ware Corporation did Mrs. Whiting own? A. Exactly 50%.

Q. Mrs. Whiting was not on the board of directors ever of Ware Corporation, was she? (154) A. No.

Q. You served on the board of directors of Ware Corporation for several years, did you not? A. Yes.

Q. For how long and during what time period? A. From the inception of the Ware Corporation, which was several years ago, until early 1974.

The Court: How much, if any, stock did you own in that company? I understand your wife owned 50%.

Macauley Whiting—for Plaintiff—Cross.

The Witness: I owned no stock.

* * * * *

Q. Is it not a fact that your wife specifically asked you to serve on the board of directors of Ware Corporation? A. I have no recollection of whether she did or not. She says that she did not.

Q. Do you recall giving a deposition on August 8, 1974 (155) in this case? A. Yes.

Q. Let me read to you a question and an answer at page 134 of your deposition and see if that refreshes your recollection, regarding the Ware Corporation:

"Q. Was that an investment that you and Mrs. Whiting had made? A. That was an investment that Mrs. Whiting made.

"Q. Mrs. Whiting made? Did you have any connection with the investment at all? A. She asked me to serve as a director of the company."

Were you testifying truthfully to the best of your ability at the time? A. Yes, I was.

* * * * *

(169) * * * Q. Do you recall any discussions, Mr. Whiting, from the late '60's or early '70's, with Mrs. Whiting where you talked to Mrs. Whiting about the short swing profits and the fact that her transactions and your transactions were both relative to that provision? A. I don't recall any specific discussion with her.

Q. I read from pages 152 and 153 of your deposition taken on August 8, 1974 in this case and ask you if it refreshes your recollection:

"Q. Would you describe the discussions, the substance of the discussions, in 1973 and the participants in the discussions? A. Discussions were with Mrs. Whiting, citing the regulations about the—in general the sale of—need to (170) avoid short swing transactions.

Macauley Whiting—for Plaintiff—Cross.

"Q. Do you recall when in 1973 you had these discussions? A. No.

"Q. And was the substance that there shouldn't be purchases and sales even of stock in Mrs. Whiting's name within a 6-month time period? A. The substance was that—that we would have to be sure that one of us didn't sell and the other buy in the same 6-month period.

"Q. And was there a—in that discussion was there any comment about the fact that if one did buy and one did sell within six months that any resulting profit may have to be paid over to Dow Chemical? A. No.

"Q. Well, what was the reason, if any, that that was discussed, why there shouldn't be any transactions within six months? A. Because it wouldn't be proper. I wasn't aware of the penalty.

"Q. Okay. What was the basis, what was your basis for being of the view that it wouldn't be proper if you had any basis? A. Advice from general counsel of the Dow Chemical."

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(171) . . . Q. Does that refresh your recollection, Mr. Whiting—

Mr. Beatie: Objection.

The Court: I will allow that.

Does that testimony that has just been read refresh your recollection on whether you and your wife had such a discussion?

The Witness: Yes, sir. I may have misunderstood the question that led into all of this which, as I understood it, was did I recall specific discussions between Mrs. Whiting and myself in 1968 and 1969, and I answered that I did not recall specific discussions in that time period.

Macauley Whiting—for Plaintiff—Cross.

The Court: This question, of course, would result in a different answer keyed into 1973? Is that what you're telling me? In 1973 you did have such a discussion with your wife? Is that what you're telling me?

The Witness: Yes.

* * *

(179) * * * Q. Mr. Whiting, after Mrs. Whiting's father's death in 1949, up to the year 1957, did you or Mrs. Whiting have any professional investment counselors render advice with respect to the Dow securities? A. I had no investment counselor, and to the best of my knowledge, Mrs. Whiting was not paying anyone to advise her with respect to those securities.

* * *

(180) * * * Q. Mr. Channin, the attorney, he was the estate lawyer who handled the estate of Mrs. Whiting's father and mother? A. Yes.

Q. Did both you and Mrs. Whiting retain and receive consultation from Mr. Channin respecting your financial affairs?

* * *

(181) * * * A. I have to give two answers to that.

We did not retain Mr. Channin for financial advice. In the course of his proffering legal advice occasionally financial advice spilled out.

Q. Did you both utilize Mr. Channin for legal advice? A. Yes.

Q. Did there not come a time in approximately 1957 when a professional investment counselor was retained? A. Yes.

Q. Do you recall his name? A. Joseph Freedman.

Q. Do you recall the circumstances as to how Mr. Freedman was selected? A. Yes.

Macauley Whiting—for Plaintiff—Cross.

Q. What were such circumstances? A. Mr. Freedman had been an investment counselor for my grandparents. I asked him if he would be willing to talk to Mrs. Whiting about serving as investment counselor to her. He agreed. I introduced them, and she decided that she would like to utilize the services of Mr. Freedman.

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(184) • • • Q. Did you, during the time period from 1957 through 1972, attend meetings with Mr. Freedman? A. Yes.

Q. Was it not the practice that you and Mrs. Whiting would meet together with Mr. Freedman when he rendered his advice? A. As I understand that question there are two parts to it. One, the implication that Mr. Freedman always (185) rendered advice at meetings, and he did not. When Mrs. Whiting met personally with Mr. Freedman, I was . . . normally there, and he would render advice at those meetings.

Q. Do you recall any times when Mrs. Whiting met personally with Mr. Freedman when you were not present? A. No, I have no recollection.

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(192) • • • The Court: You mean it is your position—I want to get this correct in my mind—that if she called the shots alone, as far as buying and selling Dow stock, she made the judgment calls on buying and selling Dow stock, he is still liable because as a result of her holding of that stock, and the buying of it and selling of it, he received material benefits in the form you have demonstrated yesterday?

Mr. Mathews: Absolutely, your Honor. We say that the law applicable to this case is—

* Through an error in transcription, the word "not" appears at this point in the transcript. (Footnote supplied at the request of defendant-appellee.)

Macaulay Whiting—for Plaintiff—Cross.

The Court: Then you should be arguing for summary judgment, because there is no question in my mind that over the past 20-odd years Mr. Whiting materially benefited from his marital relationship with Mrs. Whiting, and if your adversary is going to stand up and say he didn't, I would suggest to you that I could find that as a matter of law.

I think the question is whether his material benefits related to his having controlled her and her stock holdings.

Let's take the thing one at a time.

Do you argue the initial point of his having materially benefited from his wife's registered ownership of some, I believe it is, 20 or 15 million dollars worth of (193) Dow stock?

Mr. Beatie: It is 20 or more, your Honor. 20 is a conservative estimate, and the answer is no.

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(200) * * * Q. Mr. Whiting would you read the handwritten notation on the bottom of Exhibit J and state whether it refreshes your recollection with respect to some bank stock to be bought? Does that refresh your recollection, sir.

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A. It refreshes my recollection, yes.

Q. What do you recall about discussions with your wife respecting the purchase of bank stock at or about that time? (201) A. My recollection is one of advising her that the subject bank on which I served as a director was a very good investment that she should consider.

Q. Thereafter did your wife purchase bank stock through Mr. Freedman, if you know? A. To the best of my knowledge, she did.

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Q. Do you recall generally that at or about 1971 you

Macauley Whiting—for Plaintiff—Cross.

had discussions wherein you counseled your wife that some of the proceeds from her Dow sales should be placed in tax shelter programs? A. I'm not sure about the exact timing, but approximately at that time I suggested to her she consider tax shelters.

Q. Tell me the substance of what you suggested to her, as best you can recall it. A. The substance was that the oil business with which I was becoming acquainted at that time represented a good opportunity for investment with tax shelter considerations and that that is something that I thought she should look (202) seriously at.

Q. Do you recall talking to her in 1971 respecting a particular tax shelter investment in Conoco? A. Yes, I do.

Q. Is that true, that you counseled an investment should be made in the Conoco tax shelter? A. My recollection is that I counseled her that she could invest in Conoco without in any way compromising my possible conflict of interest between my position in the Dow Chemical Company and her position.

* * * * *

The Court: But you did discuss her making an investment in Conoco?

The Witness: Yes, sir.

* * * * *

Q. Do you have any recollection of Mr. Freedman advising you and your wife jointly that he opposed tax shelters, that he did not think they were suitable investments? A. I have a general recollection that Mr. Freedman was (203) opposed to tax shelters. How that was implemented, I don't recall.

* * * * *

(206) * * * Q. Mr. Whiting, do you recall the tax shelter investment in Sunoco this year? A. Yes, I do.

Macauley Whiting—for Plaintiff—Cross.

Q. Do you recall approximately when that was? A. Very approximately.

Q. Approximately when? A. Some time after 1970.

Q. Do you recall discussing with your wife your views concerning whether an investment should be made in the Sunoco tax shelter? A. Yes.

Q. What was the substance of your talks with your wife at the time? A. That Sunoco was another tax shelter investment (207) which she could make that wouldn't constitute any conflict of interest situation for me, and that I thought she should consider it.

* * *

(209) * * * Q. Mr. Whiting, before the relationship with Mr. Freedman was terminated, was there another bank stock investment that you counselled your wife to make? A. I don't recall any.

Q. Would you recognize the name People's Bank? A. Yes, I do.

Q. Do you recall discussing with Mr. Freedman an investment in People's Bank stock through your wife's account? A. No, I do not.

* * *

(210) * * * Q. Mr. Whiting, I ask you to look at Defendant's Exhibit M in evidence, and ask whether that refreshes your recollection with respect to an investment in People's Bank stock? A. Yes.

Q. Do you recall now discussing with Mr. Freedman an investment in People's Bank stock from the proceeds of the sale by Mr. Freedman of Dow stock in Mrs. Whiting's account? A. The question has implications that I am not sure (211) what you mean by the question.

Q. Tell me whatever you recall about the People's Bank stock investment—whatever you recall about your discussions with your wife and/or Mr. Freedman.

Macauley Whiting—for Plaintiff—Cross.

The Court: Let's just start with this: Did you suggest to your wife the possibility of her investing in the People's Bank?

The Witness: Originally, I did.

Q. Thereafter, did you discuss with Mr. Freedman the accomplishment of an investment for your wife in People's Bank? A. I discussed with Mr. Freedman, according to this letter, the furnishing of funds for such an investment.

* * *

(212) * * * Q. Do you recall when the relationship that you and your wife had with Mr. Freedman was terminated? A. Generally, I do, yes.

Q. Approximately when? (213) A. Sometime between December of 1971 and September of 1972.

Q. Do you recall the circumstances that led to the termination of the arrangement with Mr. Freedman? A. Generally, yes.

Q. Generally, what were the circumstances? A. Generally, Mr. Freedman had very restricted ideas about securities that were proper for Mrs. Whiting to invest in, and she was restive about the strictness of what he imagined should be invested in. I shared that conviction. In addition—

Q. Did you—I'm sorry; go ahead. A. In addition to that, call, we desired to change the accounting firms, and so is a part of a total reshuffling of those people that served Mrs. Whiting and me.

Q. Is it not true, Mr. Whiting, that in 1971 and 1972 that you counselled your wife that she should be more aggressive in her investment program? A. I believe so.

Q. And is it not true that you counselled her that she should become more active in investing in tax shelter programs? A. I believe so.

(214) Q. Is it not true that Mr. Freedman generally

Macauley Whiting—for Plaintiff—Cross.

opposed this trend—that is, the aggressiveness and the tax shelter investments? A. Yes.

Q. You mentioned at or about this time the change in accountants. For a time period was Haskins & Sells the accountants who you and your wife utilized? A. Yes.

Q. And that would have been, would it not, perhaps as early as 1940's up through the 1950's? A. Yes.

Q. And then did there not come a time when you and your wife switched accountants from Haskins & Sells to Arthur Andersen? A. Yes.

Q. Do you recall approximately when that was? A. My recollection, which may be not too precise, is sometime in the mid to late 1960's.

Q. The Haskins & Sells accounting firm, had that been the firm that performed services for Mrs. Whiting's father? A. Yes.

Q. And the switch from Haskins & Sells to Arthur Andersen, what was the basis for the cause of that switch? (215) A. There was an incident in which Haskins & Sells was very conservative in their view rendering, and my recollection is Mrs. Whiting got very upset then with them and—

The Court: You didn't? You weren't upset at all?

The Witness: That wouldn't be exactly correct, your Honor, but she was much more upset than I was.

The Court: Would it be fair to say you were both upset by something they did?

The Witness: Yes, sir.

The Court: All right.

Q. How did it happen that Arthur Andersen was chosen as the successor accountant for you and Mrs. Whiting? A. Arthur Andersen had functioned as the accountants for

Macauley Whiting—for Plaintiff—Cross.

the Northward Institute, which was the other—I might say the other party that was involved in the transaction in which we got upset over Haskins & Sells' performance.

Q. Did you initially suggest that Arthur Andersen become the new accountants? A. I have no recollection, and, presumably, it would have been a joint—

Q. A joint decision by you and your wife? (216) A. Yes; joint initiation.

Q. In 1972—

The Court: When was the change made?

The Witness: I don't recall any more precisely than mid to late 1960's.

Q. In 1972, what were the causes or reasons, if any, for changing accountants from Arthur Andersen to a new accountant? A. It had primarily to do with the desire to invest in tax shelters, I believe.

Q. Is it not true that you discussed possible new accountants who could render tax shelter advice with some investment bankers before you made the new selection? A. Yes.

Q. And with what investment banking firm did you discuss the possibility of the new accountants? A. Smith, Barney.

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(218) . . . Q. Did you talk to someone at Goldstein, Golub & Kessler when the name was given to you by someone at Smith, Barney? A. Yes.

Q. Did you arrange for a meeting that you and your wife would have with the Goldstein, Golub & Kessler accountants? A. No.

Q. Did you talk to your wife at or about this time about the possibility or suggestion of dropping Arthur Anderson and Mr. Freedman and switching to Smith, Barney and Goldstein? A. We discussed changes.

The Court: I didn't hear the answer.

Macauley Whiting—for Plaintiff—Cross.

A. We discussed changes.

Q. Did your wife ultimately acquiesce in switching the investment counseling or investment adviser services from Mr. Freedman to Smith, Barney? (219) A. I don't know how to answer that because that sounds like I took the initiative and my wife acquiesced, and I did not take the initiative.

Q. Did you and your wife talk about it jointly and jointly decide on the change? A. Yes.

Q. Does the same hold true for switching from Arthur Andersen to Goldstein, Golub & Kessler? A. Yes.

* * * * *

The Court: I would like to clarify something:

Whose affairs were these accountants to devote their attention to?

The Witness: Which accountants, sir?

The Court: Goldstein, Golub.

The Witness: They were to take care of the affairs of my wife, of myself, of our children, of the trusts, of the foundation and any other accounting advice that either my wife or I might require relevant to some other interests we had.

The Court: That includes, for example, your oldest child who at that time was about 24 years old? You said your children.

The Witness: Yes. They would prepare taxes for (220) the oldest child.

The Court: Whose affairs were Smith, Barney to take care of, whose account or accounts were they to have?

The Witness: Initially it was my wife and I and the trusts, and later on I believe they acted for the children directly.

* * * * *

Macauley Whiting—for Plaintiff—Cross.

(230) * * * Q. At some time in 1972 or 1973, did you suggest to Mrs. Whiting that she should dispose of approximately 2 percent per year of the Dow stock in her name? A. My best recollection now is the 2 to 3 percent figure arose in a joint—in a discussion between us and neither of us proposed it to the other.

* * * * *

(231) * * * Q. If I may, let me try to refresh your recollection in this regard. I am referring to page 141 of your deposition taken on August 8, 1974:

"Q. Now, I take it that prior to May 18, 1973 you and Mrs. Whiting had either an understanding, goal, or a plan as to family dispositions of Dow stock from year to year, did you not? A. Many advisers had advised Mrs. Whiting that she should diversify her estate. I suggested to her about a year before this, I believe, that she should use a figure of about 2 percent per year. At some point she accepted this advice and that was—that was her plan for divesting her stock until the factors that laid behind this May, '73 conference came about."

Do you recall being asked that question and giving that answer in your deposition? A. Yes, I do.

Q. Was that answer correct insofar as you could recall at the time? A. I hate to give a complicated answer, but as I reread the deposition it was correct, but it was not a (232) preconceived suggestion that I made to her, it was a spur of the moment thing, as we were talking. I did suggest it to her.

Q. A spontaneous suggestion? A. A spontaneous suggestion.

The Court: Spontaneous? You mean you had not thought about it before and just occurred to you at that moment?

The Witness: In the course of the discussion the specific figure of 2 to 3 percent emerged as something

Macauley Whiting—for Plaintiff—Cross.

that I thought she should consider as a disposition program.

The Court: That number just came to mind and you said it to her?

The Witness: Yes, sir.

The Court: You had not just had the matter with tax advisers, lawyers or anybody else before that, where they put into your mind that a 2 to 3 percent annual program in some way be beneficial? I don't understand how you, a layman, can sit there and say that suddenly out of the blue you came out with a plan where she should diversify her holdings to the extent of 2 or 3 percent a year. This is, frankly, from my own experience, something that is usually derived from professionals who hold themselves out to be lawyers, accountants, and possibly investment counselors, (233) and it is incredible to me that you can sit there and say that you just came out with this figure spontaneously. I want to be frank with you because I am the trier of the facts.

If your recollection is jogged by what I have said, you might be able to put this in a proper context. If it happened the way you say it happened, I will weigh your testimony.

The Witness: Yes, sir, it takes a fairly complex answer, and while I am not aware of it, apparently I am better at long-term planning, at the dynamics of these situations, than most people, and I would tend to think of a 2 to 3 percent number in terms of its effect over a 20-year period frankly better, I think, than other advisers who Mrs. Whiting was consulting, and it is in that context that I came up with that figure, which I think is semi-professionally reached.

The Court: The figure originated from your lips, I gather?

Macauley Whiting—for Plaintiff—Cross.

The Witness: I believe so.

The Court: When she heard it, did Mrs. Whiting say anything?

The Witness: I don't have a specific recollection of her reaction.

The Court: Well, do you recall that she said (234) "That is absolutely ridiculous" or, on the other hand, do you recall she said, "Well, that sounds very reasonable, I think we should do that" or did she say nothing?

The Witness: No. My recollection is that she felt we should discuss it with Goldstein, Golub, and with Smith, Barney, and if nobody objected, that that would be okay with her.

* * *

(243) * * * The Court: I would like to ask the witness a question:

Prior to your entering into your marriage with Helen Dow, did you enter into any ante-nuptial agreements?

The Witness: I don't understand what an ante-nuptial agreement is, but I don't think so. There were no agreements before we got married.

The Court: In other words, any agreement relative to your rights to her property once you became married? Normally, in an ante-nuptial agreement the parties make some (244) disposition of one or the other's then existing property so that it may or may not pass in the normal course following marriage.

The Witness: We had no such agreement.

The Court: You had no ante-nuptial agreement?

The Witness: No, sir.

* * *

Macauley Whiting—for Plaintiff—Cross.

(267) * * * Q. Mr. Whiting, did one of the subjects of the discussion encompass Mr. Kessler indicating that Goldstein and Golub preferred to render advice to the family unit as opposed to rendering individual advice? A. I don't recall him making that comment in September at our home.

* * * * *

Q. Tell me any knowledge you have of that being discussed, and when and with whom. A. That discussion took place at the initial meeting in Mr. Goldstein's office.

Q. Tell me the nature of that discussion. A. As I recall it, the Goldstein firm had several—several maybe too many, but some family groups for whom they (268) worked and those groups they considered it a family representation, so that their construct of the situation was that they worked with the whole family, and that's the way they described their operation to Mrs. Whiting and I.

Q. And did they not say that that was the fashion they would attempt to operate with respect to you and Mrs. Whiting and your family? A. Yes, I believe so.

Q. After that, I take it you and Mrs. Whiting did agree that they would do all the income tax returns, including the joint return of you and Mrs. Whiting, the charitable family foundation return, the returns for the trusts for the children, and the children's returns, is that correct? A. Yes.

* * * * *

(280) * * * Q. I believe there has been previous testimony about your suggesting to Mrs. Whiting a few years earlier, perhaps, a figure of selling approximately 2 percent of the Dow stock per year, is that not correct? A. If 18 months is a few years earlier, then, yes.

Q. Well, I will stand corrected by your recollection, 18 months.

My question is, was there an increase during that 18-month period up through the end of '73 in the divestment

Macauley Whiting—for Plaintiff—Cross.

so that in excess of 2 percent was being sold in 1973? A. Yes.

There was no change, as I understood it, in the long-range program, but because of special considerations in 1973 Mrs. Whiting decided to double and redouble the amount.

Q. What were the bases, if any, for the decision to double and redouble the amount of the dispositions in '73? A. As I recall the bases, they were this:

First, that Stewart Kessler talked about increase in capital gains taxes, and mentioned in the memorandum of the May '73 meeting, and that any divestment in '73 would likely receive more favorable tax treatment than the same divestment in 1974.

(281) Then there was the matter of the Form 144, as I recall the number, which had to be executed by Mrs. Whiting in order to legally sell these shares of stock. As I recall, she felt this was the government closing in on her and that because she feared this was part of a trend, she wanted to increase the divestment in order to accomplish it before the government did something else to prevent her from doing it.

Q. Exhibit U, with respect to the increased divestment program, states in part, "All of this is subject to adjustment depending upon the growth and success of Dow Chemical Company."

Do you recall that being discussed? A. Not at that specific time.

Q. Do you recall it being discussed at any time in any of the conferences with Goldstein-Golub advisers? A. Yes, I do.

Q. Whenever it was discussed, what was the substance of the discussion as to how the disposition program would be adjusted depending upon the growth and success of Dow Chemical Company? A. That is a very complicated situa-

Macauley Whiting—for Plaintiff—Cross.

tion, as I am sure you understand, dependent upon Mrs. Whiting's feelings of proprietorship towards the Dow Chemical Company, my position as a director of that company, our estimate of the financial (282) success, prospects for success or failure of the company. All of those things came into such a discussion.

* * * * *

(283) * * * Q. Exhibit U reflects a discussion about the exercise of your Dow option by the end of 1973, do you recall that? A. Yes.

Q. Do you recall the discussion about how to fund the exercise of your option? A. Yes, I do.

Q. What was the approximate amount of money required for you to exercise your option? A. Approximately \$500,000.

(284) Q. And I believe you stated that Mr. Kessler advised consideration of a loan, an intra-family loan, from Mrs. Whiting to you of approximately \$500,000 for the purpose of funding the exercise of your option? A. Yes, and I have a very strong recollection because he pressed that very hard against the objections of Mrs. Whiting and myself.

Q. Tell us the substance of what you recall.

The Court: What he said, what you said, what Mrs. Whiting said, what anybody else said on this subject, the exercise of the option and the funding of the exercise.

A. I recall that he said that this was just the way to do it and that this would result in less cost to me for a loan and a better investment for Mrs. Whiting than she might otherwise make.

The Court: Did he suggest the terms of the loan relate to time, interest, and so on?

Macauley Whiting—for Plaintiff—Cross.

The Witness: Yes. The figure of 6 percent, I believe, is mentioned in the memorandum, and I recall feeling that that was too low an interest rate and that it would not be a high enough interest, and I said that to Mr. Kessler.

Q. Do you recall anything else that was said regarding the option or the funding of its exercise? A. I'm sure he made the point that funds would be (285) available from the sales of Mrs. Whiting's Dow stock.

Q. From funds that would be in Smith, Barney, which would—

The Court: Well, how would they be generated?

The Witness: Mostly from the sales—

The Court: Of her stock, right?

Q. And those funds were being generated in a larger quantity than previously because of the increase in the disposition program during 1973, is that not correct? A. Yes.

* * * * *

(289) Mr. Mathews: I would like to clarify that right now, your Honor.

The Court: All right. He wants to know, at this (290) point, was there any discussion relative to where you would get the funds to repay the loan?

The Witness: I don't recall such a discussion, your Honor.

Q. Well, your income from your salary at Dow and whatever other income you had during 1973, was approximately 100 to 120 thousand dollars a year total, was it not? A. Yes.

Q. Was there any discussion about how much of your income each year you would have to utilize to repay Mrs.

Macauley Whiting—for Plaintiff—Cross.

Whiting, if the loan were made? A. Not to my recollection.

Q. At the initial meeting was there a discussion as to the maturity date of the loan, how long a loan, if it were consummated would run? A. I don't recall any discussion.

* * *

(291) * * * Q. Mr. Whiting, on or about December 27, 1973, did you exercise your option? A. Yes.

Q. And it required you to pay Dow Chemical approximately \$520,773? A. Yes.

* * *

(292) * * * Q. And you borrowed the complete amount of money from your wife, is that correct? A. Yes.

* * *

(295) * * * Q. The note itself, dated December 27, 1973, contained in Exhibit X, that note is back-dated, is it not, Mr. Whiting? A. The note was signed after December, 1973, yes.

Q. It was signed a substantial time period after December, 1973, was it not?

Mr. Beatie: Objection, your Honor.

The Court: Sustained.

When, if you recall, or approximately when, was the note signed?

The Witness: My recollection is not very precise, but it was perhaps around the first of March, 1974.

Q. Was the note signed after someone from Dow Chemical advised you of the possible 16B problem with respect to the exercise of the option? A. Yes, it was.

* * *

(296) * * * Q. Is it not true that during 1972 and 1973

Macauley Whiting—for Plaintiff—Cross.

Mrs. Whiting was billed by Goldstein, Golub and paid for all the services respecting advice given to both you and Mrs. Whiting? A. I know I didn't pay for it. I think she probably did.

* * *

(302) * * * Q. Mr. Whiting, in the fall of 1972 you and your wife opened an account with Smith, Barney in New York, is that correct? A. Yes.

Q. When they were opened they were serviced by Mark Rickabaugh in the capital management department of Smith, Barney? A. Yes.

Q. And they were discretionary accounts? A. Yes, to the best of my knowledge.

The Court: How many accounts were opened?

The Witness: My recollection on the exact (303) mechanics of it is not precise, your Honor. I know there was an account opened for Mrs. Whiting and for myself at that time.

The Court: Was that one account for the two of you?

The Witness: Separate accounts.

The Court: All right.

The Witness: At that time or later there were accounts opened for the children and for the trusts for the children.

* * *

(304) * * * Q. Who paid Smith, Barney's fees, its capital management fees? A. To the best of my recollection, Mrs. Whiting paid them.

* * *

(310) Q. Do you have any recollection of talking to Mr. Rickabaugh about assuring that a window exists for the sale of your wife's Dow stock? A. Yes.

Macauley Whiting—for Plaintiff—Cross.

Q. Tell me the approximate time and the circumstances and the substance of such discussion. A. I don't recall the time or circumstances.

Q. You recall you talked to Mr. Rickabaugh about this? A. I have a vague recollection, yes.

Q. Would it have been in 1972 or 1973? A. Yes.

Q. What did you talk about? What did you say and what did he say? A. My vague recollection has to do with—it had to do with not having sales and purchases within the same 6-month period.

Q. Sales and purchases by whom? A. By members of the family.

Q. Including you, your wife, the children, and the foundation? A. Yes.

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(311) . . . Q. Did you seek Mr. Rickabaugh's guidance in timing the exercise of your option in late 1973? A. Yes.

Q. And did you leave it to Mr. Rickabaugh's judgment to tell you when the lowest possible price would be before the year-end? A. Yes.

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Q. Did you in substance communicate to Mr. Rickabaugh your acquiescence in Smith, Barney treating your wife as a control person with respect to her Dow sales? A. I don't recall discussing with him that as an issue, and, therefore, it would be hard to communicate acquiescence on what was not discussed as an issue.

Q. Well, he just apprised you of the fact, and you just accepted it, is that what you mean? A. Yes, I think so.

(312) Q. You raised no objection, in other words, correct? A. Correct.

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Macauley Whiting—for Plaintiff—Redirect.

(316) * * * Redirect Examination by Mr. Beatie:

* * * * *

(324) Q. Yesterday you testified about the origin of the two percent sales program or some sales effort intended to dispose of 2 percent of Mrs. Whiting's securities per year.

Would you describe the general assist of the two percent figure? A. To the best of my recollection, the 2 percent figure arose in the course of a discussion, one, of a general series of more or less informal discussions which Mrs. Whiting and I have from time to time about the course of her estate. She had been disposing of some shares on an unplanned basis. It seemed like it might be a good idea—it seemed to me like it might be a good idea to formalize that a little bit into a planned program that would accomplish what she seemed to want to accomplish with her estate, which was to at the same time diversify but not lose her very significant holding of Dow stock.

* * * * *

(325) * * * Q. Can you remember anything else about the conversations which led up to the selection of the 2 percent figure? A. I remember explaining to her that the 2 percent figure would, based on past performance of the stock, allow her holdings of Dow stock to still increase and expand and at the end of twenty years have a 2, 2½ percent diversification program, she would have half of her holdings outside of Dow stock and that still her—the size of her Dow stock holdings in dollars, would probably be larger than it was at that time.

* * * * *

(374) * * * Q. And, lastly, you indicated having had two conversations with Mr. Kessler, the first in mid January 1974, the second in late February 1974, wherein you re-

Macauley Whiting—for Plaintiff—Recross.

quested that Mr. Kessler please prepare an appropriate note.

Did you have any conversations with anyone at Dow Chemical Company between the first conversation you had with Mr. Kessler and the second conversation that you had with Mr. Kessler, any conversation relating to your acquisition of the approximately \$500,000 worth of stock? A. Your Honor, I am not clear whether the conversation that I recall with Mr. Kessler came before or after the very important conversation with Mr. Gerstacker and Mr. (375) Groening in which they explained to me they thought I was in violation of Section 16(b).

Q. Let's try to establish that.

Mr. Beatie: We will stipulate to the fact that the second conversation took place after the conversation with Mr. Gerstacker. Mr. Whiting has never been able to place this with any certainty, but on the basis of our reconstruction we are certain that is the fact.

The Court: Very well. That is what I wanted to ascertain.

* * * * *

Recross Examination by Mr. Mathews:

Q. Mr. Whiting, the note itself that was backdated, you can't recall specifically whether you signed it, is that correct? A. That is correct.

The Court: You thought it was sometime, I believe you said, in early March.

The Witness: Yes, sir.

Q. Is it not correct that whenever it was, Mr. Whiting, it was signed after you had retained counsel with (376) re-

Macauley Whiting—for Plaintiff—Recross.

spect to the problem in this lawsuit and after you had had a meeting with counsel and Mr. Kessler? A. I don't recall the meeting with counsel and Mr. Kessler. It was after I had retained counsel.

Q. With respect to the matter at issue in this case? A. Yes.

* * *

(378) * * * You testified that you had no contracts or formal agreements to receive gifts of Dow stock from your wife, is that correct? A. Yes.

Q. Is it not true that throughout the marriage there was an established practice or pattern that each and every year your wife would give you a gift of Dow stock approximately equal to the annual gift taxes exclusion of you and your wife's children? A. Yes.

Q. Has your wife ever communicated anything to you as to her intention to terminate that policy or that practice? A. No.

Q. Am I correct that a year has never been skipped (379) since 1945 or '46 in connection therewith? A. Not that I recall.

* * *

(384) * * * When you signed the Form 4's, sir, were they always in a completed form or did you sign blanks and leave it to others to fill in and file?

The Witness: They were always completed.

The Court: And before you signed them, did you (384A) examine them?

The Witness: Yes, I did.

* * *

(385) Q. Mr. Whiting, you knew, didn't you, at least from 1966 on, that when you signed the Form 4 ownership reports that if you desired you could have disclaimed on the form any beneficial ownership interest in your wife's

Macauley Whiting—for Plaintiff—Recross.

securities? A. Yes. But would you want me to qualify my understanding about it?

The Court: If your answer isn't a total yes, I am going to ask you to enlarge upon it.

The Witness: I understood from discussions with Mr. Groening that it would be possible to disclaim ownership but that would be of no consequence. If I did that, it would just be a formality and it would have no effect on anything like these proceedings here today.

* * * * *

(388) * * * Q. Up to the time you talked with the Harris Bank about possibility of a loan to exercise the option, what was the highest bank loan that you ever made in your life? A. I don't specifically recall other loans.

Q. As far as you recall you never had a bank loan before in your life? A. No, I don't recall the amount of loans that I had previously.

Q. Had you ever borrowed in your own name in excess of \$10,000 before? A. Possibly.

Q. Do you have any general recollection whether you did or didn't? A. No.

(389) Q. Had you ever borrowed as much as \$25,000 in your life before from a bank?

The Court: How about when you built your house?

The Witness: That's part of what I would be unclear on.

Q. I am asking you personally, not a loan jointly with your wife or a loan to your wife. A loan to you alone.

The Court: Solely to you.

Macauley Whiting—for Plaintiff—Recross.

A. Then, to the best of my recollection I have not borrowed more than \$25,000.

Q. When Mr. Kessler pressed you in the telephone call to take the loan from your wife, what reasons did he give, if any? A. The reasons, as I understood them, was: One, that this would be the cheapest source of the money that I could get, and, two, that it would be a good investment for Mrs. Whiting.

Q. Your counsel asked a few questions about the tax shelters in Sunoco and Conoco. You testified you did not direct your wife to make those investments.

It is true, is it not, you suggested those investments to your wife? A. Yes.

* * *

(393) * * * Q. Some questions were asked with respect to the voting of your wife's share of Dow. I take it each year management proposes a slate of directors? A. Yes.

Q. And I take it each year since you first became a director you have been a management nominee for a director? A. Yes.

Q. Did you ever receive any knowledge from 1945 to date of your wife ever voting for anyone other than the management's proposed slate of directors? A. No.

(394) Q. I take it each year whenever there are issues put to a shareholders' vote there is a management proposal or a management suggestion for which proxies are asked to be voted on behalf of management; is that correct? A. Yes.

Q. From 1945 to the present, are you aware of your wife ever voting against a management proposal with respect to Dow?

* * *

(396) * * * A. No.

* * *

Macauley Whiting—for Plaintiff—Recross.

(398) * * * Q. Is it the regular course of the company's business to plan its world-wide operations by having certain types of reports internally generated for the directors?

A. Yes.

Q. Budgeting new construction and new areas of business, and the like? A. Yes.

Q. Generally, how many years in the future during the past few years have such plans covered? A. My recollection is three years and five years.

Q. Did any extend beyond five years? A. Not that I recall.

Q. Would it be fair to say that generally throughout (399) your serving as a director that you generally have had access to plans projecting the company's operations over the next five-year period? A. Yes.

Q. You were asked questions by your counsel, and you gave some answers, respecting your comments to your wife about formalizing the disposition program for her securities. Do you recall that? A. Yes.

Q. I believe your testimony was that you felt that your wife should adopt a more formal disposition program? A. Yes.

Q. And I believe you said that in the discussion it evolved a suggestion of about two per cent per year? A. Yes.

Q. And I believe you said that you had discussed the disposition program might well extend over a twenty year period? A. Only a question of semantics; I talked about if it extended over a twenty-year period such and such would happen.

Q. I believe you testified that if it extended over a twenty year period that in your viewpoint about two per (400) cent per year in twenty years would leave your wife with about the same value in the remaining shares she

Helen Dow Whiting—for Plaintiff—Direct.

presently had, based upon the prospects for the company?
A. Yes.

* * *

Did you discuss with your wife at the time what factors you gave consideration to in determining that after twenty years an amount of Dow securities that she would have left at the end of the disposition program would have approximately the same value as the total amount of securities she held in year one? (401) A. Did I discuss that with her?

Q. Yes. A. I don't recall whether she accepted that I said that would happen, or I had to explain to her how I arrived at it.

Q. I am not interested in whether she accepted it or not. I am interested in what you said. A. I don't recall whether I said it or not.

Q. Is there a possibility that you may have discussed it?
A. Yes.

* * *

(413) * * * HELEN DOW WHITING, called as a witness, being first duly sworn, testified as follows:

Direct Examination by Mr. Beatie:

Q. Have you ever testified in a courtroom before, Mrs. Whiting? A. Never.

Q. Please speak up so at least I can hear you and then we will all be able to hear you.

What is your date of birth? A. August 13, 1924.

Q. And a brief summary of your education? A. I am a high school graduate and a degree from college.

Q. When did you graduate from college? A. 1945, summer.

Helen Dow Whiting—for Plaintiff—Direct.

Q. Prior to the time of your graduation—

The Court: I don't know if I heard it, but did you indicate the college from where you graduated?

The Witness: No, I did not. From Sarah Lawrence College.

(414) The Court: In 1945?

The Witness: Summer of 1945, yes.

The Court: And you received a bachelor's degree at that time?

The Witness: Bachelor of art degree.

Q. Prior to the time you graduated from college, were you financially independent? A. Yes, I was.

Q. Would you explain the circumstances under which you became financially independent? A. From gifts from my father.

Q. What were the gifts composed of? A. Dow Chemical Company stock.

Q. Nothing but the common stock of Dow Chemical Company? A. No. I had a few preferred shares, too, but I couldn't tell you how many at this time.

Q. When had you undertaken to pay your own bills?

A. At least from the age of 15 on.

Q. Had tax returns—

The Court: You paid your tuition at Sarah Lawrence from your own funds?

The Witness: No, but all my own personal things.

Q. Were there any bills other than your tuition for (415) college that were not paid by you? A. I couldn't answer that exactly because I can't remember.

Q. Did you file income tax returns prior to 1945? A. Yes.

Helen Dow Whiting—for Plaintiff—Direct.

Q. In your own name? A. Yes.

Q. Would you please explain how those income tax returns were prepared? A. They were prepared by somebody at Dow Chemical and audited by Haskins & Sells Company for me.

Q. Can you tell me to the best of your recollection when that began? A. That began ever since I ever remember paying income taxes and I never remember a time when I didn't pay income taxes.

The Court: Let's go back a moment. I'm interested in this. You say that you have had independent means since you were 15—

The Witness: Well, since before I was 15.

The Court: You say you filed income tax returns as long as you can remember?

The Witness: Yes, that's true. I signed them.

The Court: You signed them?

(416) The Witness: Yes.

The Court: Did anyone else sign them?

The Witness: No.

The Court: Did you pay taxes in the form of signing checks to the Internal Revenue Service?

The Witness: Yes.

The Court: At age 15?

The Witness: Yes.

The Court: Very well.

Q. Did the general procedure which you have described for the preparation and filing of your income tax returns continue for some period of time after 1945? A. Yes.

Q. When were you married? A. In 1945, July 6th.

Q. To whom were you married? A. Macauley Whiting.

Q. Have you been continuously married to Mr. Whiting since that date? A. I certainly have.

Helen Dow Whiting—for Plaintiff—Direct.

Q. You have children? A. Yes.

Q. How many? A. Six.

(417) Q. Can you tell us their names with more precision than Mr. Whiting?

The Court: I thought he did pretty well, if I may say so.

A. Do you want their ages too?

Q. Yes. A. Susan Whiting, age 27. Martha Whiting, age 26. Helen Whiting, Jr., age 22. Miriam Whiting, age 21. Henry Whiting, age 18. Mike Whiting, age 17—oh, I missed on one—Henry Whiting, age 19.

The Court: Then you and your husband have problems. He said he was 18 and then 20 and now you say 19.

The Witness : Henry Whiting is 19 years of age. Mike is 17.

Q. That's Macauley Whiting, Jr.? A. That is true.

Q. After your marriage, did you continue to acquire any assets? A. Yes, I did.

Q. Would you describe the circumstances under which you acquired assets after your marriage to Mr. Whiting?

A. Through gifts, through inheritance, through purchase.

Q. What were these assets? A. Dow Chemical Company stock.

(418) Q. Anything else? A. Not to my—

Q. —up to the year 1950, did you acquire anything other than Dow Chemical stock? A. No, not to my remembrance.

Q. Up to the year 1950, did you discuss the retention or possible sale of your Dow stock with anyone? A. No.

Q. Did you have any conversations about your Dow stock with your father? A. Yes.

Helen Dow Whiting—for Plaintiff—Cross.

Q. What was the relationship of your father to the company? A. My father was chairman of the board, president of the company, and general manager of the Dow Chemical Company.

Q. Was your grandfather in fact founder of the company? A. Yes, he was.

Q. Did your father give you any advice about your Dow securities? A. Yes.

Q. What did he say? A. "Do not sell your Dow stock."

(419) Q. Did he tell you anything else? A. He said I could do anything I wanted to with the income from it, but do not sell the securities.

* * *

(424) * * * Q. At some point during the period 1950 to 1960, did you change your mind about holding your Dow securities and not selling them? A. Yes, I did.

Q. Would you describe the circumstances which led to that alteration of your decision? A. It was a very simple decision. I had a daughter about that time towards the '60's that was about ready to go into prep school and Mr. Whiting and I had decided that we would send our children to prep schools, all of them, and all of them to college.

I knew that this would be my responsibility to pay for tuitions for all these schools. I realized that I did not have enough income from the Dow securities in order to take care of sending two children, three children, and ultimately four children at the same time through school, so it was of interest to me to diversify my holdings to try to acquire more income in order to accomplish the purpose of education of the children.

* * *

(491) * * * Cross Examination by Mr. Mathews:

* * *

Q. * * * I believe you testified, Mrs. Whiting, that at

Helen Dow Whiting—for Plaintiff—Cross.

some point switching from Mr. Freedman to Smith, Barney, that you had determined to sell 2 percent per year of your Dow stock? A. Yes.

Q. Prior thereto you said you had no specific percentage program? A. That's correct.

Q. Prior thereto, it was Mr. Freedman who made the decision how much to sell? A. That's the way you dealt with Mr. Freedman.

Q. You just accepted his judgment and he would write you a letter and tell you what he had sold? A. That's correct.

(492) Q. You and Mr. Whiting talked in connection with the switch and out of your talk evolved the 2 percent program? A. Yes.

Q. Do you recall that it was Mr. Whiting who suggested the 2 percent number initially? A. Mr. Whiting and I batted around a lot of numbers and this was the number that we mutually came up with that was the correct number.

Q. Do you recall which one of the two of you suggested 2 percent initially? A. It could have been me, it could have been him, it could have been either of us, because we talked a lot of numbers.

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Q. Do you recall any discussion with Mr. Whiting at the time about the fact that if you sold 2 percent per year for, let us say, 20 years, that in light of the performance (493) of Dow, the company, that the stock that you would be left with after 20 years would be approximately equal to what you were starting out with? A. This is the way Mr. Whiting's mind works and this is the sort of information I appreciate from him. I'm sure that he did say this to me.

Q. Do you now recall that that was discussed when you and Mr. Whiting were talking about, let us say, formalizing your program for disposition? A. Probably, yes.

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Helen Dow Whiting—for Plaintiff—Cross.

Q. You stated at the suggestion of Mr. Kessler at Goldstein, Golub in approximately April, 1973, the decision (494) was reached to increase the disposition program to approximately 5 percent, is that correct? A. I made that decision, yes.

Q. I show you Exhibit T in evidence, which is a conference report of a meeting that you and your husband had at Goldstein, Golub in May, 1973, and ask you whether that would refresh your recollection that the decision to increase to 5 percent was made in May, rather than April. A. It would seem it was in May. April, May, it doesn't make much difference to me, but there was a decision made.

* * *

(495) * * * Q. Do you recall traveling to New York for a meeting (496) at Goldstein, Golub sometime between May 18, 1973 and October 29, 1973? A. No, but I think the decision was made somewhere between those two dates.

Q. To go from five to ten per cent? A. Yes.

Q. You think that was done by telephone? A. I believe so.

Q. I believe you stated on direct examination the reason for the second increase in August or September of 1973 from five to ten per cent was because a problem regarding Rule 144 statements had come up; is that correct? A. That is correct.

Q. Can you describe for me what the problem was, and who you talked to concerning it? A. Mark Rickabaugh told me that we had to file a thing called a 144 statement in order to sell low securities.

Q. And this was, your recollection is, August or September of 1973? A. I can't be absolutely positive of the date, but that's my recollection.

Q. At any rate, you pinpoint Mark Rickabaugh telling (497) you about 144 and in time you connect it to the increase from five to ten percent? A. Yes, I do.

Helen Dow Whiting—for Plaintiff—Cross.

Q. Had you ever heard of Rule 144 before? A. Never.

Q. You never had any talks or never read anything about Rule 144 before? A. No, never.

* * *

(499) * * * Q. Directing your attention to Exhibit G-9 in evidence, which is a September 28, 1972 letter from you to Dow Chemical Company and Smith, Barney, will you not admit (500) that in 1972 at or about the time the Smith, Barney account was opened Mr. Rickabaugh brought the 144 problem to your attention? A. Apparently so from the signature of the letter and this letter.

Q. And looking at Exhibit G-7 in evidence, will you not admit that in October 1972 you were executing letters to comply with the Rule 144 problem? A. Apparently so.

Q. So what was the reason that the disposition program in the latter half of 1973 was increased from five to ten per cent? A. I stand by my same answer, because of this 144 statement.

The Court: Of course you had known about this now, according to your testimony, for about a year.

The Witness: Apparently it never hit home with me at all until all of a sudden it did in 1973. It is obvious that I signed something—

The Court: But you were aware of Rule 144 from what I have heard—

The Witness: I was apparently vaguely aware of it, but it really hit home in 1973 and scared me.

* * *

(501) * * * Q. How did the December 27th loan come about? A. Mac asked me if I would loan him money to buy his stock option stock. I said, yes, I would. He told me that he would secure it by a note. I said that I would accept his note, and that was all there was to it.

Helen Dow Whiting—for Plaintiff—Cross.

Q. When did he ask you? A. Just prior to December 27th.

• • • • •
(503) Q. Prior to Christmas 1973, had you ever discussed with your husband how he would repay any loan that you might make to him? A. No.

Q. When you made the loan on December 27th, did you have any discussions with your husband about how it would be repaid? (504) A. No. It was his business to repay me as he wished. I didn't see any point in discussing that.

Q. So I take it there was no term set on the loan, it was just— A. Yes, there were terms on the loan.

The Court: What were the terms?

The Witness: The terms were that I would have a note, and there would be a certain percentage interest that he would pay me. I call that terms.

Q. Now, how about maturity? Was the note ever to mature? A. That I can't say.

Q. Did you ever have any discussions with your husband as to how long the note would remain outstanding? A. No, I did not. I assumed it would be outstanding until it would be paid.

Q. Did you have any discussions with your husband about how often he would make installment payments? A. No. That was his business, not mine.

Q. You left it completely up to him? A. Of course.

The Court: In other words, you left him free to repay the loan at whatever time or times he wished in whatever amounts he wished?

(505) The Witness: That is correct. At a certain percentage per year.

The Court: And what was that percentage?

Helen Dow Whiting—for Plaintiff—Cross.

The Witness: Seven per cent.

The Court: And how did that percentage come about? How was that arrived at?

The Witness: That was his discussion with the Goldstein firm that they came to the conclusion 7 per cent was the right amount.

Q. So you didn't participate in any bargaining or negotiation with your husband or anybody at the Goldstein firm to set the interest rate? A. No, I did not.

The Court: He said 7 per cent is what Goldstein recommends, and I gather you said all right.

The Witness: Yes, I did.

The Court: And if he said Goldstein recommended 1 per cent, I assume you would have gone along.

The Witness: No, I think I would have been nervous, because I have had loans, and I don't think I would have liked 1 per cent. Likewise, if he had said 12 per cent, I likewise would have been nervous and wouldn't have liked that.

The Court: You felt comfortable with 7 per cent?

(506) The Witness: I felt 7 per cent was a fair amount.

Q. Did you have any discussions with Mr. Whiting at or about the time the loan was made as to where Mr. Whiting would get the half a million dollars plus interest to make payments on the loan? A. No.

Q. Did you have any understanding in that regard? A. I didn't see why I had to. If he said he would repay the loan, I assumed he was an honest person and he would repay the loan.

Q. And as far as you were concerned if it took him forty

Helen Dow Whiting—for Plaintiff—Cross.

years to repay it that would have been all right? A. Yes, indeed.

Q. As far as you were concerned, if he were not able to pay interest for a period of years that would have been all right? A. No, it wouldn't.

Q. Did you have an understanding or discussions with Mr. Whiting about the interest payments on the loan? A. No, I did not.

Q. You were aware, were you not, that the interest would be approximately \$35,000 a year? A. No, I was not.

(507) Q. So I take it you had no discussions with Mr. Whiting about what the source of any interest payments would be?

The Court: I would like to get back to that last answer.

I have noticed the record keeping that you have made, and I have observed as far as your background and your intelligence is concerned. You mean to say that you would lend your husband something over \$500,000, and the interest rate was to be 7 per cent, and you had no idea that the interest was approximately \$35,000 a year?

The Witness: I never stopped to figure it out. It just didn't occur to me that that was an important thing to do.

The Court: I see. All right.

.

(513) Q. Do you recall your approximate net worth in, let's say, the end of 1973? A. No.

Q. Do you recall the approximate value of the Dow stock you held in your name as of the end of 1973? A. No.

Q. Can you state within a million dollars your approximate net worth as of December 1973? (514) A. Mr.

Helen Dow Whiting—for Plaintiff—Cross.

Mathews, I have professionals that do that for me, and I will never be able to stipulate to you my net worth, my net value, any stocks or bonds, or anything that I own. I have others do that for me.

Q. Can you, within twenty-five million dollars, state your approximate net worth as of December 1973?

Mr. Beatie: Your Honor, I object to this.

The Court: Yes, I sustain the objection. The witness has answered the question. She says that she can't under any circumstances give you even an approximation of her net worth as of December 31, 1973.

Q. Can you give me an approximation of the number of shares of Dow Chemical you owned in December 1973?

A. I have professional people that keep those totals for me. No, I cannot give you that answer.

Q. Can you tell me within—

The Court: Perhaps you can tell me, if you would, ma'am, the dividend paid by the Dow Chemical Company per share of common stock for the year 1973.

The Witness: No, I cannot.

The Court: Would you turn back to the records which you keep so meticulously which indicate the dividends of some \$520,000 to the penny without investment advisors or investment counsellors. Look at that and see if that (515) refreshes your recollection.

I should like you to look at Exhibit 8, which is in evidence.

Now, you keep these records, and I am going to ask you to look at them and tell me if you are able to answer that question.

Helen Dow Whiting—for Plaintiff—Cross.

The Witness: I can look at these records and answer the question how much dividends I received for the first, second, third and fourth quarters, and the total for the year, but I can't tell you how much per share.

(516) The Court: You're telling me that you don't know the dividend paid per share annually during 1973 by the Dow Chemical Company?

The Witness: Yes, that's right, your Honor.

The Court: Was it a dollar a share?

The Witness: That I don't know.

The Court: Was it fifty cents a share?

The Witness: That I don't know.

The Court: You have no idea?

The Witness: That's correct.

The Court: Thank you.

By Mr. Mathews:

Q. Mrs. Whiting, what were the sources of funds that you used to make the December 27th over half a million dollar loan to Mr. Whiting? A. Those were funds in my account at Smith, Barney & Company.

Q. The check was drawn on the Harris Bank? Do you recall that? A. That's correct.

Q. Is it not true that you have an arrangement where your Dow Chemical dividends are automatically deposited to your Harris account? A. That's correct.

(517) Q. Is it not true that over the years the primary source of deposits in the Harris Trust have been dividends on your Dow stock? A. Yes, of course.

Q. Approximately what total amount of dollars in dividends were you receiving on your stock in 1973? A. From that exhibit, I was receiving over half a million dollars.

* * * * *

Helen Dow Whiting—for Plaintiff—Cross.

(518) * * * Q. Mrs. Whiting, the approximately 29,770 some odd shares were sold in your account and it is in evidence in September and November, 1973. Do you recall that? A. Yes.

Q. Does that sound right to you? A. Yes.

Q. And the net proceeds were a little over 1.6 million dollars? A. Yes.

Q. Do you recall that you had an arrangement with (519) Mr. Rickabaugh where he would reinvest the proceeds of your Dow sales at that time in short-term paper?

A. Some short-term paper, not all.

Q. And some commercial paper? A. Yes.

Q. Was not it yours and his practice to, firstly, invest enough to pay the capital gains tax on the sales? A. Yes, that's correct.

Q. I take it the commercial paper in your account at that time had been purchased in part from the proceeds of the sale of your Dow stock? A. Yes, I would imagine that is true.

Q. Then an amount of the commercial paper purchased with those proceeds was sold to have the cash transferred to your Harris Bank account? A. Yes.

The Court: Am I correct, then, that the source of the funds which were transferred to the Harris Trust Company and which comprised your check for \$520,000 payable to your husband, were the proceeds of a sale of Dow stock and Dow stock dividends?

The Witness: No, there would be no dividends in that. I looked upon that as sale of commercial papers that (520) Mr. Rickabaugh had in my account and the commercial papers would have come about from the sale of Dow stock.

The Court: So that I should eliminate from consideration any of the Dow dividend income you re-

Helen Dow Whiting—for Plaintiff—Cross.

ceived during 1973 as utilized to fund the loan you made to your husband?

The Witness: Yes, you should.

* * *

(525) * * * Q. Mrs. Whiting, I ask you to read Mr. Freedman's handwritten note dated July 14, 1971, on Exhibit HH, and ask you whether that refreshes your recollection, as to whether your husband participated in arranging for the Conoco investment. A. You know, Mr. Mathews, Mr. Freedman was dead set against any tax shelters and particularly on oil shelters. He thought they were very serious and very dangerous and I should not get invested in them. So any time there is correspondence about Conoco or Sunoco in particular, there may be correspondence saying "Mac said this" or "Mac said that" which was his way of getting even with telling me this was the wrong thing to do.

Q. You don't imply that what Mr. Freedman said was not true? A. Yes, I do mean to imply that. If I can read the writing.

Q. July 14, 1971, "After talking to Bill Gilbreath, (526) at Margan, I called Mac Whiting and discussed Conoco deal. Mac decided he wanted to go along with the deal to the extent of \$40,000." A. Okay, but that doesn't say Mac paid \$40,000 or that Mac went along with the deal. This is Freedman's way of getting even with Mac. This has nothing to do with Mac investing in Conoco.

Q. Was there, to your knowledge, a source of friction between Mr. Freedman and your husband? A. Yes, there was.

Q. And from time to time were you aware of any acts by Mr. Freedman trying to get even with your husband?

A. That is an example of an act of getting even with my husband.

Helen Dow Whiting—for Plaintiff—Cross.

Q. Do you have any knowledge of what the source of friction between your husband and Mr. Freedman was?

A. Yes. I just explained that Mr. Freedman did not think that I should invest in oil shelter deals or even get into shelter deals, and Mac was trying to expand my financial knowledge, of which tax shelters is part of learning the financial business.

The Court: I gather from what you're saying that Mr. Freedman was a somewhat conservative or conventional investment counselor and what your husband was urging upon (527) you was a more aggressive approach, is that correct?

The Witness: This is correct.

The Court: And this caused you ultimately to terminate your relationship with Mr. Freedman and to seek the counsel of Smith, Barney and others?

The Witness: That is exactly correct, yes.

Q. When you switched to Smith, Barney, you were aware, were you not, that Smith, Barney had been the investment banker for Dow Chemical Company for a number of years? A. I was aware, yes, indirectly.

Q. And your husband arranged, initially, for the first Smith, Barney meeting, did he not? A. Yes.

* * * * *

(529) Q. Mrs. Whiting, is it fair to say that throughout your marriage, since 1945, that whatever expenses you have paid towards maintaining your home, and the children's expenses, and the help that you had at your home, that your principal source of funds over the years has been dividends on your Dow holdings? A. Yes.

Q. And that would be until you went to Mr. Freedman and began to sell some of your Dow stock, and then your

Helen Dow Whiting—for Plaintiff—Cross.

principal source of funds would be proceeds from the sale of Dow stock as well as dividends? A. Yes.

Q. I believe you testified that the reason that you commenced the original disposition program through Mr. Freedman was that you and your husband jointly had determined that any children you then had or any future children you had would all be educated in private schools? A. That's true.

Q. Had you been educated in a private school? A. Yes, 9th grade through college.

Q. Had Mr. Whiting attended a private school? A. Yes, all the way through, from kindergarten.

Q. That was an agreement you reached as to, if I can call it, life style, to educate your children privately? (530)

A. That was the customary thing done in both our families.

Q. I take it you made a decision that whatever Mr. Whiting's salary was at the time would be insufficient to pay the educational and related expenses for all of your children in private schools? A. I didn't even think about his salary. I knew I had the most amount of income and it would be my responsibility to do it.

Q. In any event, that was the general assist of the disposition program, to provide the funds to pay for the children's private education? A. That's correct.

Q. That you both wanted. A. That's correct.

* * * * *

(535) * * * Q. Mrs. Whiting, has it been your practice to vote the proxies on your shares each year, your Dow shares? (536) A. Could you possibly speak a little louder?

Q. Yes. Has it been your practice over the years to vote the proxies with respect to your shares of Dow stock? A. Yes.

Q. Have you voted each year for your husband whenever he was a candidate for director? A. The proxy statement doesn't state that.

Helen Dow Whiting—for Plaintiff—Cross.

Q. The management proposes a whole slate? A. Yes, but you vote for certain people on the proxy statement and in turn you give your proxy to them and then they vote.

The Court: In other words, if you sign the proxy without designating anything else, in essence, you are delegating your vote to a management designated committee?

The Witness: That's correct.

Q. Do you as a matter of practice sign your proxy each year giving proxy to the management proposals? A. Yes, I think I always have.

Q. You can't think of any time when you voted against management on your proxy? A. I have been tempted, but I don't think so.

* * * * *

(540) * * * Q. From 1945 to the present, can you recall your husband ever utilizing any accountants other than the same accountants you were utilizing? A. No.

Q. Throughout the marriage can you recall your husband ever utilizing any professional investment advisers other than the ones you were using at the time? A. No. He didn't always utilize the accountants or the professional people—the investment people—I don't know that he had an account with Mr. Freedman too.

Q. My question is, are you aware he ever had any other investment adviser? A. I'm not aware that he ever had any other.

Q. And he also utilized the legal services of Mr. Channin? A. Yes, he did.

Q. Except, I believe, in the case of Mr. Channin, Mr. Whiting did himself pay Mr. Channin's bill with respect to (541) the advice to Mr. Whiting, did he not? A. You would have to ask him. I don't know what bills he paid to Mr. Channin.

Helen Dow Whiting—for Plaintiff—Cross.

Q. When you went to Smith, Barney, you each had discretionary accounts opened up at Smith, Barney? A. That is true.

* * *

(544) * * * Q. With respect to the relationship with Goldstein, Golub & Kessler, they advised you with respect to your Dow stock, did they not? A. In what way do you mean they advised me—

Q. With respect to accounting and tax estate matters? A. Yes.

Q. And they advised your husband, did they not? A. I would imagine so.

Q. Well, you know so, do you not? A. Well, ask him. He would know better than I would. I don't know.

Q. You sat at joint meetings at Goldstein, Golub & (545) Kessler with your husband? A. Yes, I did.

Q. And you want your testimony to stand that you do not know that they advised him as well as you? A. They advised us about so many different things I can't specifically say whether they advised him, advised me, and so on.

Q. They gave advice with respect to your stock, his stock, the foundation, the children, the children's trust from time to time in whatever areas came up? A. Yes.

Q. When they rendered such advice you and Mr. Whiting were there together? A. Correct.

* * *

A74

Plaintiff's Exhibit 1.

Memorandum of W. A. Groening, Jr. to Macauley
Whiting, *et al.*, dated 10/6/65.

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)



THE DOW CHEMICAL COMPANY

October 6, 1965

Mr. Donald K. Ballman
Mr. Robert B. Bennett
Dr. R. H. Boundy
Mr. C. B. Branch
Mr. Calvin A. Campbell
Mr. N. D. Griswold
Mr. H. H. Lyon
✓ Mr. Macauley Whiting

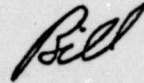
In the past each of you has been advised concerning the prohibitions of Section 16(b) of the Securities and Exchange Act with reference to the dealings by officers and directors in stock of their own company. There has been a recent amendment to the regulations under this section which somewhat liberalizes the previous rules insofar as acquisition of shares pursuant to option plans is concerned. I advised Messrs. Key and Henske of the new rules in their present form on the occasion of their recent election to the Board and as a matter of bringing up to date everyone who is concerned with this problem, I am quoting from my letter to them on this subject as follows:

"Section 16(b) of the Securities and Exchange Act is designed to prohibit unfair use of information by "insiders" and provides for the divestiture of profits obtained by the use of such information. Specifically, in the case of a Director it provides that if he purchases and sells, or sells and purchases, stock of his company within the same six-months' period, any profits which he makes from the transactions accrue to the benefit of the company and the company can sue to recover them, or any other stockholder of the company may sue to recover such profits on behalf of the company. This means, for all practical purposes, that any time you buy Dow stock you should then not sell any Dow stock for a period of six months." Likewise, if you sell any Dow stock you should then not buy any Dow stock for a period of six months.

"There is, however, one exemption from the foregoing rules which will be of interest to you and that has to do with shares acquired pursuant to The Dow Chemical Company's option plans. The exemption provides that the acquisition of shares pursuant to option plans which meet certain requirements (which the Dow plans do meet) is exempt from Section 16(b). This means that in the exercise of any options held by you, you need not be concerned about the fact that you may have sold other Dow shares

-2-

during the preceding six months or do sell Dow shares during the succeeding six months. Please note, however, that the exemption pertains only to an acquisition of shares under an option plan and not to a disposal of such shares. In other words, you cannot sell shares acquired pursuant to an option plan and then, within six months before or after, purchase shares by some means other than exercise of your options and come within the purview of the exemption."



W. A. Groening, Jr.
Assistant General Counsel

A75

A76

Plaintiff's Exhibit 2.

Memorandum of W. A. Groening, Jr. to Macauley
Whiting, *et al.*, dated 5/27/66 (4 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)



THE DOW CHEMICAL COMPANY

May 27, 1966

Mr. Donald K. Ballman
Dr. Earle B. Barnes.
Dr. Earl W. Bennett
Mr. R. B. Bennett.
Dr. A. P. Beutel
Dr. R. H. Boundy
Mr. C. B. Branch.
Dr. Melvin Calvin.
Dr. Calvin A. Campbell

Mr. Herbert D. Doan.
Dr. Leland I. Doan
Mr. Herbert H. Dow.
Dr. Carl A. Gerstacker.
Mr. John M. Henske
Mr. Max Key
Mr. H. H. Lyon.
✓ Mr. Macauley Whiting.

Re: Stock Holdings of Directors and Officers

From time to time the Legal Department has advised directors and officers concerning their responsibilities under the Securities Exchange Act with reference to dealings in Company stock. We have endeavored to advise each person becoming an officer or director of his responsibilities in this regard at the time he assumes his new position. We have also endeavored to bring to your attention changes in the rules and regulations that have occurred from time to time. The purpose of this letter is to attempt to summarize all of these matters within the framework of one writing. Its preparation at this time has been motivated by a recent publication of the New York Stock Exchange concerning a director's responsibility in these matters and also by recent changes in Securities and Exchange Commission interpretations on this subject, as well as proposals of the Securities and Exchange Commission to promulgate more rules and regulations in this area.

1. Reports to the Securities and Exchange Commission

As you all know, each of you is required to report to the Securities and Exchange Commission on or before the tenth day of each month any acquisition or disposal of Dow stock made by you during the preceding month. It has been the longstanding practice in Dow for Miss Elsa Carlson to prepare the monthly reports from the daily transfer sheets which we receive from The Cleveland Trust Company as our principal transfer agent. The fact that the transfer sheets are the source of information means, of course, that Miss Carlson can furnish only that information which actually appears in the transfer records. Therefore, an officer or director should be dealing in Company stock through a brokerage account and not having the shares registered in his name, Miss Carlson would have no means of picking up this information. As the responsibility for reporting is that of the officer or director as an individual and is not directly a Company responsibility, it is therefore necessary that the officer or director advise her concerning any transactions which do not appear of record. A closely related problem is that of month-end

transactions. For example, a purchase or sale on the New York Stock Exchange made during the last few days of the month would not appear of record until the following month, but the director or officer has in fact parted with his beneficial interest on the date of sale and the transaction should be reported for that month. Therefore, directors and officers should be extra alert to call such transactions to Miss Carlson's attention so that she can prepare the proper reports.

The monthly reporting requirement has been further complicated by Securities Exchange Act Release No. 7793 issued January 19, 1966, which overturned interpretations of more than 30 years' standing and now requires a director or officer to report the holdings of securities of his wife and minor children. The rationale of this new interpretation is that the income derived from shares so held might be used to maintain a common home or meet expenses which would otherwise be met by the husband from other sources, or the husband might have the ability to exercise a controlling influence over the purchase, sale, or voting of the securities. It is not necessary that all of these tests be met, but any one of them is deemed by the SEC to be sufficient to imply that the director or officer has beneficial ownership of such securities. Each of you was advised of this requirement and appropriate forms reporting the ownership of your respective wives and minor children were prepared, signed by you, and filed. Your reports indicated the name of the actual owner of the shares where the owner was a person other than you. While we do not believe that the filing of the report constitutes an admission by the director or officer that he has beneficial ownership of shares held by his wife or minor children, it may be desirable for any director or officer who wishes to expressly disclaim such beneficial ownership to do so whenever he files future reports with the SEC. If any of the addressees of this letter wishes to have such a disclaimer inserted in his future reports, I would appreciate it if he would advise me of his desire and I will prepare an appropriate disclaimer for his reports and advise Miss Carlson concerning the correct method of its use.

The January 19 release also indicates that it may require the reporting of shares held by relatives other than wife and children or relatives of the wife who reside in the same household as the director or officer. If any of you have a situation such as this, I would appreciate your advising me so that we might consider whether or not the facts require the filing of such information.

The SEC is proposing a new rule (not yet in effect) which would require an officer or director to report on his monthly report any pledge or release from pledge of Company shares given as security for a loan and would also require the report of any loan by an officer or director of Company shares to another person and, of course, the repayment of such loan, whenever the transaction amounts to \$30,000 or more. The proposed new regulation has met with

considerable opposition and it is not known at this time whether it will be adopted. If and when it is adopted, you will all be notified accordingly and we will then have to set up a mechanism for including such transactions in the monthly reports.

2. Limitations on Dealings in Dow Stock

The next two paragraphs restate previous advice that I have given on dealings in Company stock. I am sure that you are all familiar with these limitations but they are repeated in the interest of completeness.

Section 16(b) of the Securities and Exchange Act is designed to prohibit unfair use of information by "insiders" and provides for the divestiture of profits obtained by the use of such information. Specifically, in the case of a director or officer, it provides that if he purchases and sells, or sells and purchases, stock of his company within the same six-months' period, any profits which he makes from the transactions accrue to the benefit of the company and the company can sue to recover them, or any other stockholder of the company may sue to recover such profits on behalf of the company. This means, for all practical purposes, that ~~any time you buy Dow stock you should then not sell any Dow stock for a period of six months.~~ Likewise, if you sell any Dow stock you should then not buy any Dow stock for a period of six months.

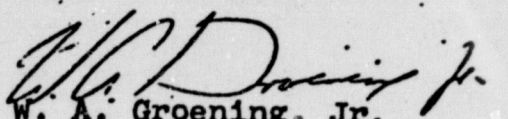
There is, however, one exemption from the foregoing rules which will be of interest to you and that has to do with shares acquired pursuant pursuant to The Dow Chemical Company's option plans. The exemption provides that the acquisition of shares pursuant to option plans which meet certain requirements (which the Dow plans do meet) is exempt from Section 16(b). This means that in the exercise of any options held by you, you need not be concerned about the fact that you may have sold other Dow shares during the preceding six months or do sell Dow shares during the succeeding six months. Please note, however, that the exemption pertains only to an acquisition of shares under an option plan and not to a disposal of such shares. In other words, you cannot sell shares acquired pursuant to an option plan and then, within six months before or after, purchase shares by some means other than exercise of your options and come within the purview of the exemption.

The new interpretations concerning shares held by wives and minor children now bring their shares within the limitations stated in the two preceding paragraphs. This means, then, that for the purpose of interpreting these paragraphs, ~~your wife's or minor children's shares will be treated as if they are your shares.~~ Thus, a purchase by your wife and a sale by you, or vice versa, within the same six months' period appears to invoke the penalties of Section 16(b). Some directors or officers may disclaim beneficial ownership by their wives, but I think there is considerable doubt as to whether they could safely rely on such a disclaimer to avoid the invocation of the Section 16(b) penalties.

A problem that is related but not identical with the short swing transactions under Section 16(b) is that of stock dealings based upon actual inside information. This is a considerably more indefinite type of restriction than that which is posed by Section 16(b). Under Section 16(b) there must be both a purchase and a sale within the definite span of six months, but there are other situations where a mere purchase without a sale or a sale of shares held for a period in excess of six months might also trigger liability on the part of the director or officer. You have all read of the charges and counter charges in connection with the Texas Gulf Sulfur matter, where it is charged that options were granted and purchases were made on the basis of inside information not available to the public generally. The New York Stock Exchange has recently issued a booklet entitled "The Corporate Director and the Investing Public". A copy of this booklet is enclosed with each copy of this letter. It would be very worthwhile if each of you could read its entire 47 pages. Some portions of the booklet are, however, more pertinent than others. Part I, extending from Pages 3 to 16, is more pertinent to the subject of stock ownership and is important in that it presents the point of view of the New York Stock Exchange. Part II covers areas beyond the scope of this particular letter and is merely a statement of good practice as prepared by the National Industrial Conference Board and the American Society of Corporate Secretaries. It does not present the official point of view of a regulatory body, as does Part I.

Pages 11 through 14 of Part I set forth some fairly specific recommendations as to times when it would be most appropriate for officers and directors to be buying or selling company stock. It should be pointed out that these statements by the Stock Exchange do not have any effect of law but are simply intended to be guidelines.

I will be glad to discuss the subject matter of this letter or the enclosed booklet with any of you who wish to do so.


W. A. Groening, Jr.
Assistant General Counsel

P.S. In case this letter has been heavy reading, you may find the whole subject lightened somewhat by the attached reprint of an editorial that appeared in "Business Week" under date of May 14.

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Plaintiff's Exhibit 3.

Memorandum of W. A. Groening, Jr. to Macauley
Whiting, *et al.*, dated 6/18/68 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

MIDLAND, MICHIGAN
June 18, 1968

Donald K. Ballman
Earle B. Barnes
Robert B. Bennett
C. B. Branch
William R. Dixon

John M. Henske
Julius E. Johnson
Max Key
Herbert H. Lyon
Macauley Whiting
Zoltan Merszei

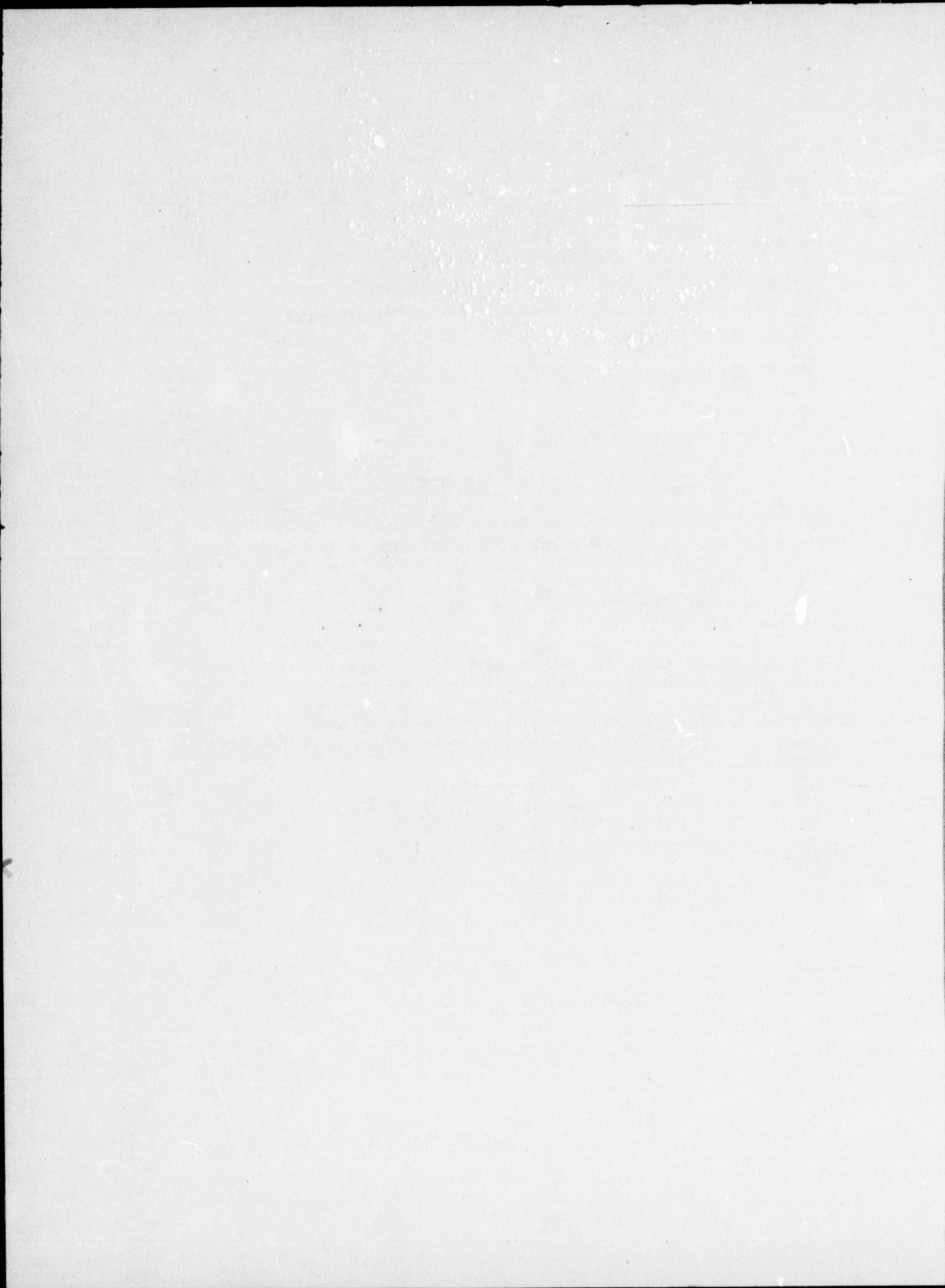
RE: EXERCISE OF OPTIONS BY OFFICERS AND DIRECTORS

I have previously advised each of you that the short-swing prohibitions with regard to dealing in Dow stock (Sec. 16b, Securities Exchange Act) do not apply in the case of the exercise of options pursuant to Dow option plans.

As a result of a recent court decision on this subject involving another company, I must regretfully reverse my previous advice. It now appears that any combination of purchase and sale of Dow stock within the same six months' period by an officer or director is prohibited by Section 16b.

If any of you have any specific questions on this, please do not hesitate to contact me.

W. A. Groening, Jr.
General Counsel



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Plaintiff's Exhibit 4.

Memorandum of W. A. Groening, Jr. to Macauley
Whiting, *et al.*, dated 3/27/69 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

MIDLAND, MICHIGAN
March 27, 1969

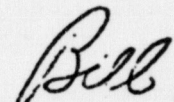
D. K. Ballman
E. B. Barnes
R. B. Bennett
C. B. Branch
W. R. Dixon
J. M. Henske

J. E. Johnson
Max Key
H. H. Lyon
Zoltan Merszei
Macauley Whiting
G. J. Williams

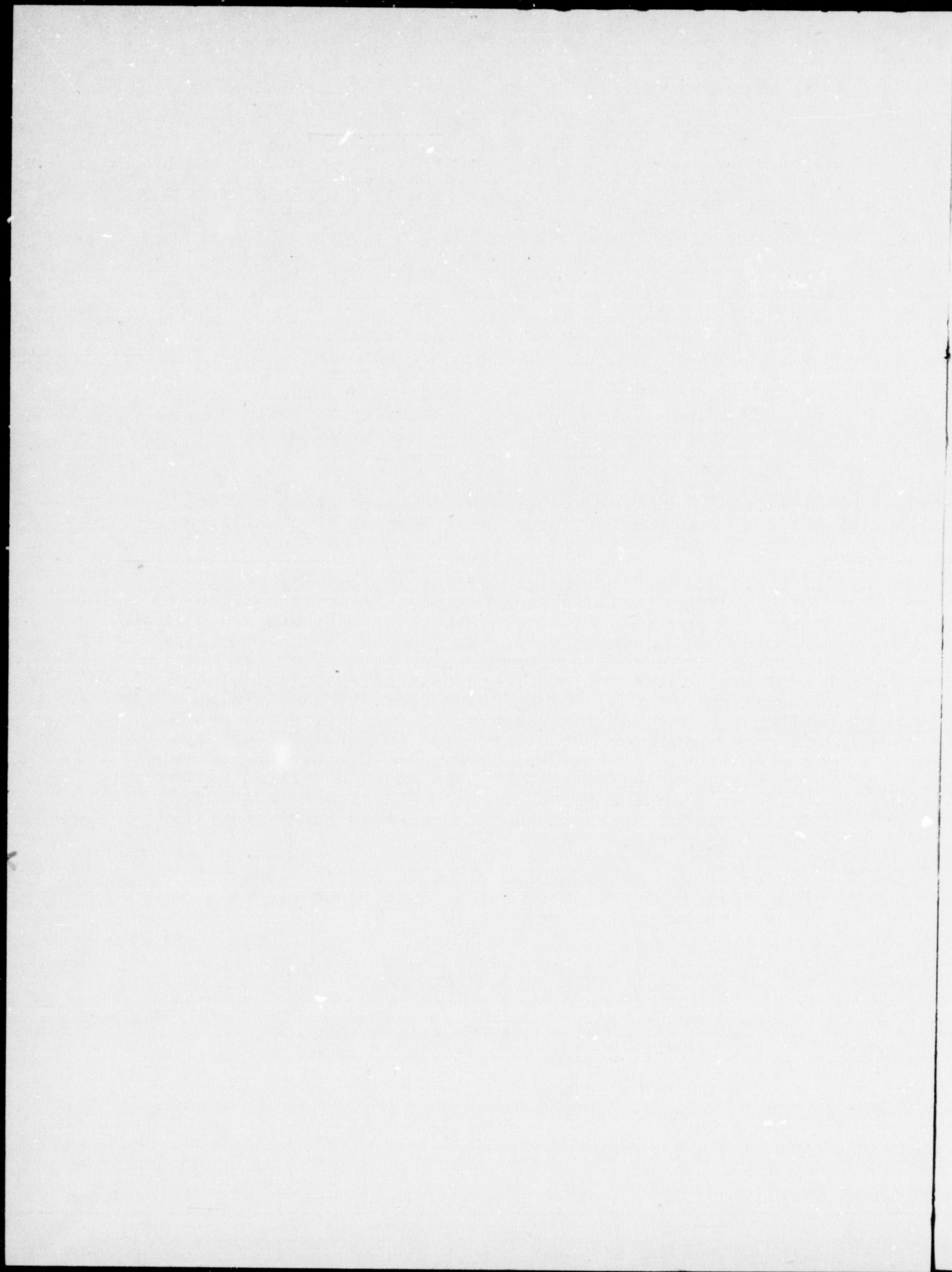
I am sure that you are all aware that certain options held by you for the purchase of Company stock will expire in June.

I would like to remind you of the short-swing provisions of the Securities Exchange Act of 1934 as it applies to purchase and sale of Company stock by officers and directors. Once you have exercised your options each of you will be subject to the short-swing provisions for the next six months following the date of exercise. This means that if you sell any Dow stock within six months after the date of the exercise of the option the profit is recoverable by the Company and any stockholder may sue on behalf of the Company for the purpose of recovering such profit. Profit in this case is defined as the difference in the price at which shares were purchased and the price at which shares were sold within the same six month period.

If any of you have any individual questions concerning the application of these rules, I, of course, would be very glad to answer them for you.



W. A. Groening, Jr.
General Counsel



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Plaintiff's Exhibit 15.

Smith, Barney & Co. statement for account of Helen Dow
Whiting, 11/30/73—12/31/73 (2 pp.).

(Photoprints)

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STATEMENT SHOULD BE RETAINED SINCE IT
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ANY CHANGES THAT APPEAR ON SUBSEQUENT
STATEMENTS. IT SHOULD ALSO BE RETAINED FOR
TAX PURPOSES.

O.E. A FINANCIAL STATEMENT OF THIS FIRM IS
AVAILABLE FOR YOUR PERSONAL INSPECTION
AT ITS OFFICES OR A COPY OF IT WILL BE
MAILED UPON YOUR WRITTEN REQUEST.

Smith, Barney & Co.
Incorporated
20 Broad Street • N.Y. N.Y. 10005

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
11 30			BALANCE FORWARD			35668.24
12 04		200	CORNING GLASS WORKS	88		
12 04	200		DIGITAL EQUIPMENT CORP	90 1/2	18249.50	17445.14
12 05			CENTRAL SOUTH WEST C			270.00
12 05			SIGNCO CORPORATION			230.30
12 05			CENTENNIAL CORP RG SB			2600.00
12 05			PORT OF N Y N J AUT			2000.00
12 06			INDUSTRIAL NUCLEONICS			2337.50
12 07			CHECK ISSUED			
12 07	5000		CENTENNIAL CORP RG SB SF	49 1/2	1256.00	
12 07			DEB CV 43 DEC 1992 JD		2490.83	
12 07	100		DIGITAL EQUIPMENT CORP	86		
12 07		5800	DON CHEMICAL CO	51 1/2	8674.75	
12 07			TRADE AS OF 11/30/73			296736.25
12 07			TR CERT NJ 39211			
12 07		100	DCH CHEMICAL CO	51 2 3/4		
12 07			TRADE AS OF 11/30/73			5141.02
12 07			NEG TRADE .15/SH			
12 10	200		TR CERT NJ 39211			
12 11			M G I C INVESTMENT CORP	27 3/4	5646.54	
12 11	300000		HIRED TO HARRIS TRUST	CK ISS	16000.00	
12 12			MID ATLANTIC FUEL	REC/CK PD	297500.00	
12 13			M G I C INVESTMENT CO	DIV CR		35.00
12 13			INTERNATIONAL BUSINES	DIV CR		252.00
12 14			STANDARD OIL OF IND	DIV CR		270.00
12 14		200	PCLARCO CORP	DIV CR		40.00
12 17			DIGITAL EQUIPMENT CORP	91 3/4	18499.50	
12 19		15000	HANNA MINING CO	DIV CR		405.00
			U S TREASURY BILLS	99.810		14956.50
			CONTINUED ON NEXT PAGE			

Smith, Barney & Co.
Incorporated
20 Broad Street, N.Y. N.Y. 10005

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AT ITS OFFICES OR A COPY OF IT WILL BE
MAILED UPON YOUR WRITTEN REQUEST.

DATE	BOUGHT RECEIVED OR LONG	GOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT
12 18			DEC 27 1973		
12 18			7.60 BASIS		
12 18	200		SIC PEN CORP		
12 18	400		TEXACO INC	13 5/8	2789.38
12 19			BRIGGS STRATTON CORP	28	11368.82
12 19			SYNTEX CORPORATION	DIV CR	
12 19		20000	U S TREASURY BILLS	DIV CR	
12 19			DEC 27 1973		
12 19			DOLLAR PRICE 99.832222		
12 19			7.55 BASIS		
12 19	750000	750000	CHASE MANHATTAN CTF DEP	DEL/\$ REC	
12 20			MID ATLANTIC FUEL CO	REC/CK PD	743750.00
12 20			AMT REQUESTED	CK ISS	21000.00
12 21			GARDNER DENVER CO	DIV CR	
12 21		25000	HIRED TO HARRIS TRUST	CK ISS	21000.00
12 21			U S TREASURY BILLS	99.065	
12 21			DEC 27 1973		
12 26			3.10 BASIS		
12 26			TO HARRIS TRU ST	CK ISS	520773.75
12 27	150000	750000	MID ATLANTIC FUEL CO	DEL/\$ REC	
12 27			U S TREASURY BILLS	98.143	147214.50
12 27			MAR 28 1974		
12 27			ACCT ROLL OVER		
12 27			7.346 BASIS		
12 27		150000	U S TREASURY BILLS	100	
12 27			DEC 27 1973		
12 28			ACCT REDEPTION		
12 31			CORNING GLASS WORKS	DIV CR	
12 31			DICK A B CO	DIV CR	
12 31			BALANCE		
			CONTINUED ON NEXT PAGE	2	

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Defendant's Supplement to Plaintiff's Exhibit 15.

Smith, Barney & Co. statement for account of Helen Dow
Whiting, 8/31/73—12/31/73 (17 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
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SMITH, BARNEY & CO.

INCORPORATED

30 BROAD STREET • NEW YORK, N.Y. 10005

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SAN FRANCISCO • SEATTLE • TAMPA
SMITH, BARNEY & CO. INTERNATIONAL
INCORPORATED

MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

ACCOUNT NO.

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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	PRICE	NO.	ED
08 31			BALANCE FORWARD						
9 05			AVON PRODUCTS INC			59295.69		YROW	5691.75
9 05			SALE OF 280M T BILLS 1	DIV CR		105.00		YAT	1000.00
9 06			1 15 73			275259.22			
9 05			SALE OF 100M T BILLS 9			99805.14			
9 05			13 73						
9 06			CENTRAL SOUTH WEST C	DIV CR		270.00			
9 06		200000	U S TREASURY BILLS	DEL/S REC		199590.00			
9 05			SEP 6 1973						
9 05		100000	U S TREASURY BILLS	DELO					
9 05			SEP 13 1973						
9 06		280000	U S TREASURY BILLS	DELO					
9 05			NOV 15 1973						
9 05	700		SIGNODE CORPORATION	50 1/8	35380.38			NS	292.
9 07	200		SIGNODE CORPORATION	50 1/4	10166.10			NS	62.
9 07			CHECK ISSUED	DIV/CPN	3862.00				
9 10	109119		SYNTEX CORPORATION	DIV CR		40.00			
9 10	1200		DOY CHEMICAL CO	RECD					
9 11			SONY CORP ADR NEW	45 3/4	55329.60			NS	427.
9 11	100		TEXAS OIL GAS CORP	DIV CR		28.75			
9 11	200		SIGNODE CORPORATION	49 3/4	5033.11			NS	111.
9 12			SIGNODE CORPORATION	49 3/4	10066.22				
9 12			FUND WIND TO HARRIS TST	CK ISS	125000.00				
9 12	100		PER REQUEST						
9 12	400		SIGNODE CORPORATION	50	5065.00			NS	65.
9 13			SONY CORP ADR NEW	47 1/4	19116.10			NS	211.
9 13	100000		INTERNATIONAL BUSINES	DIV CR		140.00			
9 13			PONTIAC MICH STADIUM CO	99 1/2	101664.58			NS	503.
9 13			NS1 5.875% 03/01/2002						
			CONTINUED ON NEXT PAGE	1					

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*SMITH, BARNEY & CO. INTERNATIONAL
INCORPORATED

MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

ENDING RR ACCOUNT NO.
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EASTMAN ROAD
40 MICHIGAN 48340

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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	AVG PRICE	RR NO.	COMM SS OR C SAFETY FUND
9 13			TRADE AS OF 07/19/73					NS	
9 13			PREV CONF AS WHEN ISSUED					NS	
9 13			DTD 06/01/73 FC 03/01/74					NS	
9 13	200		MULTIMEDIA INC	21	4271.80			NS	71.80
9 13	200		SYNTEX CORPORATION	98 1/4	19780.00			NS	130.00
9 17			HANNA MINING CO	DIV CR		405.00			
9 18			H G I C INVESTMENT CO	DIV CR		25.00			
9 10	100		POLAROID CORP	108 1/2	10915.00			NS	65.00
9 18	200		TEXAS INSTRUMENTS INC	108 3/8	21805.00			NS	130.00
9 19			SALE OF 100HT BILLS DUE			98350.97			
9 19			ON 11 23 73						
9 19			BRIGGS STRATTON COR	DIV CR		600.00			
9 19		100000	U S TREASURY BILLS	DELD					
9 19			NOV 23 1973						
9 19	200000		SAN FRANCISCO CALIF P/N	REC/CK PD	200252.00				
9 20			NAT 6.0603 03/15/1974						
9 20	100000		GARDNER DENVER CO	DIV CR		315.00			
9 20			BALTIMORE MD POLL/CTL RV	100	100316.67			NS	350.00
9 20			NSI 6.0003 09/01/1998					NS	
9 20			TRADE AS OF 03/31/73					NS	
9 20			WE MAKE MKT IN SECURITY					NS	
9 20			PREV CONF AS WHEN ISSUED					NS	
9 24		2000	DOM CHEMICAL CO	57		113249.72		NS	693.00
9 24			VS CERT CU 5750					NS	
9 25		2700	DOM CHEMICAL CO	56 1/2		151812.27		NS	667.10
9 25			NEG TRADE .15/SH					NS	
9 25			AGAINST CERT CU 5750					NS	
9 25		5300	DOM CHEMICAL CO	56 1/2		298001.88		NS	1309.00
9 25			AGAINST CERT CU 5750					NS	
9 25			HEALETT-PACKARD CO	79 3/4	16080.00			NS	130.00
9 25	200		CONTINUED ON NEXT PAGE	2				NS	

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MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
9 25	200		✓ XEROX CORP	136		
9 26	200		✓ SONY CORP ADR NEW	47 3/4	27330.00	
9 26	100		✓ SONY CORP ADR NEW	47	9662.17	
9 26	100		✓ STANDARD OIL OF IND.	87 7/8	4756.00	
9 26	400		✓ STANDARD OIL OF IND.	87 7/8	9852.50	
9 26	200		✓ XEROX CORP	142 1/2	35410.00	
9 27	200		✓ DIC FEN CORP	20	28630.00	
9 27	300		✓ BRIGGS & STRATTON CORP	53	4070.00	
9 27	200		✓ HEWLETT-PACKARD CO	81	16083.10	
9 28	50000		✓ INDUSTRIAL NUCLEONICS RG	90	16330.00	
9 28			CV SD DB 5 1/23 JUN 1991		46012.75	
9 28	6000		✓ INDUS 112 NUCLEONICS RG	88	5387.25	
9 28			CV SD DB 5 1/23 JUN 1991			
9 28	300		✓ STANDARD OIL OF IND.	88 1/4	26670.00	
9 28	100		✓ TEXAS OIL & GAS CORP	21 5/8	2192.45	
9 28	400		✓ TEXAS OIL & GAS CORP	21 3/4	8819.81	
9 28			BALANCE			
			SECURITY POSITIONS			
	100000		CENTENNIAL CORP RG SD SF			
	56000		REQ CV 44 DEC 1992 JD			
	200000		INDUSTRIAL NUCLEONICS RG			
	100000		CV SD DB 5 1/23 JUN 1991			
	100000		U S TREASURY BILLS			
			NOV 23 1973			
			ATLANTA GA ARPT RV DELTA			
			5.625% 04/01/2000			
			BALTIMORE MD POLL/CTL RV			
			MS 1 6.000% 09/01/1998			
			CONTINUED ON NEXT PAGE			
					313410.40	
					- 1923.75	
					311486.65	

AVERAGE PRICE	PR. NO.	COMMIT SALES
NS		130.
NS		112.
NS		56.
NS		62.
NS		250.
NS		120.
NS		75.
NS		133.
NS		130.
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THIS IS A FINANCIAL STATEMENT OF THIS FIRM AS

MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

DATE	BOUGHT RECEIVED ON LONG	SOLD DELIVERED ON SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	PRICE	RR NO.	COMMISSION & SALES TAXES
	100000		CHELAM COUNTY WASH PUD 1						100000
	200000		JJ1 5.000% 07/01/2013						200000
	100000		DETROIT MICHIGAN PN						100000
	100000		MAT 4.190% 01/04/1974						100000
	100000		MIDLAND CO HIGH POLL CTL						100000
	100000		FAL 5.300% 02/01/2003						100000
	100000		PONTIAC HIGH STADIUM CO						100000
	100000		MS1 5.875% 03/01/2002						100000
	100000		PORT OF N Y & N J AUTH						100000
	100000		JD1 6.000% 06/01/2000						100000
	200000		PUERTO RICO HIGHWAY AUTH						200000
	100000		JJ1 5.500% 07/01/2003						100000
	100000		SAN FRANCISCO CALIF P/H						200000
	1100		MAT 6.060% 03/15/1974						1100
	300		WASHINGTON PUB PUR S/S						300
	2200		JJ1 5.700% 07/01/2012						2200
	1800		AMERICAN TEL & TEL CO						1800
	1000		AVON PRODUCTS INC						1000
	1700		BIC PEN CORP						1700
	110919		BRIGGS & STRATTON CORP						110919
	600		CENTRAL & SOUTH WEST CORP						600
	1464		DICK A & CO						1464
	1300		DOH CHEMICAL CO						1300
	1200		EASTMAN KODAK CO						1200
	900		EXXON CORP						900
	1500		GARDNER-DENVER CO						1500
			HANNA MINING CO						
			HENLETT-PACKARD CO						
			HUBBELL HARVEY INC						
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BOSTON • CHICAGO
CLEVELAND • DALLAS • GENEVA
HARTFORD • LONDON*

SMITH, BARNEY & CO.

INCORPORATED
20 BROAD STREET • NEW YORK, N.Y. 10006

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MINNEAPOLIS • PARIS • PHILADELPHIA
SAN FRANCISCO • SEATTLE • TAMPA
*SMITH, BARNEY & CO. INTERNATIONAL
INCORPORATED

ENDING RR ACCOUNT NO.
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CASTHAY ROAD
AND MICHIGAN 48640

ICATE STATEMENT SENT TO
IN GREIF
GOLDSTEIN GOLUB KESSLER AND
ANY



STATEMENT SHOULD BE RETAINED SINCE IT
AINS INFORMATION YOU MAY NEED TO VERIFY
EST CHARGES THAT APPEAR ON SUBSEQUENT
MENTS. IT SHOULD ALSO BE RETAINED FOR
C TAX PURPOSES.

Q.E. A FINANCIAL STATEMENT OF THIS FIRM IS

MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	PRICE	RA. NO.	COMMISSION SALES
	375		INTERNATIONAL BUSINESS						375
	1000		MACHS CORP						1000
	1000		N G I C INVESTMENT CORP						1000
	1000		NEOTRONIC INC						1000
	1500		MOBIL OIL CORP						1500
	2650		MONTANA POWER CO						2650
	1500		MULTIMEDIA INC						1500
	500		NIELSEN A C CO CL A NEW						500
	900		POLAROID CORP						900
	1300		SEARS ROEBUCK & CO						1300
	1900		SIGNODE CORPORATION						1900
	800		SONY CORP ADR NEW						800
	1000		STANDARD OIL OF IND.						1000
	1000		STORAGE TECHNOLOGY CORP						1000
	600		SYNEX CORPORATION						600
	2800		TEXAS INSTRUMENTS INC						2800
	800		TEXAS OIL & GAS CORP						800
			XEROX CORP						
			END OF ACCOUNT PAGE 5						

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*SMITH, BARNEY & CO. INTERNATIONAL
INCORPORATED

CD ENDING

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ACCOUNT NO.

26 1973 NS 50 782343 1

HELEN DOW WHITING
3 EASTMAN ROAD
AND MICHIGAN 48640

PLICATE STATEMENT SENT TO
STEIN GREIF
GOLDSTEIN GOLUB KESSLER AND
SPARK

MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES									
DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	AVG PRICE	RR NO.	CCW 55 56 57 DATE RECEIVED
07 28			BALANCE FORWARD			313410.40		YR V	7620.50
10 02	500		CORNING GLASS WORKS					NS	373.75
10 02			TRADE AS OF 09/25/73	119 1/2	60123.75			NS	
10 03			CHK REQUESTED TO HARRIS	CK ISS	5000.00			YR T	1000.00
10 03			TST						
10 04			JICK A B CO	DIV CR		187.00			
10 04			CK REQ TO HAR RIS TST	CK ISS	50000.00				
10 04			CHECK ISSUED	DIV/CPN	1928.75				
10 04			XEROX CORP	DIV CR		88.00			
10 04			EASTMAN KODAK CO	DIV CR		50.00			
10 04			ATLANTA GA ARPT RV DE	CPN CR		2812.50			
10 05				TO ADJ		5000.00			
10 05	100	300	AVON PRODUCTS INC	99 1/4				NS	224.00
10 05	100		CORNING GLASS WORKS	116	11674.75	29542.65		NS	74.00
10 05			CORNING GLASS WORKS	116 1/4	11699.75			NS	74.00
10 09	10000		X					NS	
10 09			INDUSTRIAL NUCLEONICS RG	92	9395.56			NS	
10 09	200		CV SB DB 5 1/23 JUN 1991					NS	
10 11	19000		THOMAS & BETTS CORP	DUE BILL				NS	
10 11			INDUSTRIAL NUCLEONICS RG	99	19187.35			NS	
10 11	700		CV SB DB 5 1/23 JUN 1991					NS	
10 11			PURITAN BENNETT CORP	63 1/4	44690.27			NS	
10 15	200		WE MAKE NXT	118	23749.50			NS	415.00
10 15			THOMAS & BETTS CORP					NS	149.00
10 15			WITH DUE BILLS STOCK					NS	
10 16			MURBELL HARVEY INC	DIV CR		450.00		NS	
10 16	100		EASTMAN KODAK CO	129 5/8	13037.25			NS	74.00
10 16	200		THOMAS & BETTS CORP	80	12149.50			NS	149.00
10 16			THOMAS & BETTS CORP						

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MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

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26 1973 NS 50 7823 3 1

HELEN DOM WHITING
3 COTMAN ROAD
AND MICHIGAN 48640

PLICATE STATEMENT SENT TO
STEIN GREIF
G GOLDSTEIN GOLUB KESSLER AND
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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	PRICE	NO.	COMM. & SEC. FEE
10 17		500	HGSIL OIL CORP	60 1/8		29713.30		NS	336.00
10 18			HENLETT PACKARD CO	OIV CR		50.00			
10 19			PURCHASE OF 7 UNITS O	CK ISS	84000.00				
10 19			F S O PARTNERS						
10 23		91149	DOM CHEMICAL CO	DELO					
10 26	400		H G I C INVESTMENT CORP	45 3/4	18542.31			NS	242.
10 26		500	HGSIL OIL CORP	57 1/4		28235.61		NS	326.
10 26	200		THOMAS & BETTS CORP	58 1/2	11849.50			NS	149.
10 26			BALANCE			32601.21		NS	865.
			SECURITY POSITIONS						
	100000		CENTENNIAL CORP RG SB SF						FIRM 2
	85000		DEB CV 42 DEC 1992 JD						1000
	200000		INDUSTRIAL NUCLEONICS RG						600
	100000		CV SB DB 5 1/23 JUN 1991						2000
			U S TREASURY BILLS						1000
			NOV 23 1973						1000
			ATLANTA GA ARPT RV DELTA						1000
			AOL 5.6252 04/01/2000						1000
			BALTIMORE MD POLL/CTL RV						1000
			NS1 6.0003 09/01/1998						1000
			CHELAM COUNTY WASH PUD 1						1000
			JJ1 5.0002 07/01/2013						2000
			DETROIT MICHIGAN PN						1000
			HAT 4.1902 01/04/1974						2000
			MIDLAND CO HIGH POLL CTL						1000
			FAL 5.5002 02/01/2003						1000
			PONTIAC MICH STADIUM GO						1000
			NS1 5.8752 03/01/2002						1000
			CONTINUED ON NEXT PAGE						

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MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	AVERAGE PRICE	R/L NO.	COMMITTEE SAFEGUARDING
	100000		PORT OF NY & NJ AUTH						100000
	100000		J01 6.000% 06/01/2008						100000
	200000		PUERTO RICO HIGHWAY AUTH						200000
	100000		JJ1 5.500% 07/01/2003						100000
			SAN FRANCISCO CALIF P/H						200000
			MAT 6.060% 03/15/1974						100000
			WASHINGTON PUB PIR S/S						1100
	1100		JJ1 5.700% 07/01/2012						2200
	2200		AMERICAN TEL & TEL CO						1800
	1800		BIC PEN CORP						1000
	1000		BRIGGS & STRATTON CORP						700
	700		CENTRAL & SOUTH WEST CORP						1700
	1700		CORNING GLASS WORKS						19770
	19770		DICK A 8 CO						700
	700		DCW CHEMICAL CO						1464
	1464		EASTMAN KODAK CO						1800
	1800		EXXON CORP						1200
	1200		GARDNER-DENVER CO						900
	900		HANNA MINING CO						1500
	1500		HEWLETT-PACKARD CO						375
	375		HUBBELL HARVEY INC						1400
			CL 8						1000
			INTERNATIONAL BUSINESS						1500
			MACHS CORP						2650
			M G I C INVESTMENT CORP						1500
			MEOTRONIC INC						900
			MONTANA POWER CO						1400
			MULTIMEDIA INC						1000
			NIELSEN A C CO CL A NEW						1500
			POLAROID CORP						2600
			CONTINUED ON NEXT PAGE						1500

ENDING RR ACCOUNT NO.
26 1973 NS 50 7821 1

ELEN DOW WHITING
EASTMAN ROAD
AND MICHIGAN 48640

STATEMENT SENT TO
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PERIOD ENDING

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ACCOUNT NO.

CT. 20-1973 NS 50 782343 1

MS HELEN DOW WHITING
203 EASTMAN ROAD
TOLAND MICHIGAN 48440

DUPLICATE STATEMENT SENT TO

STIN GREIF
JO GOLOSTEIN COLUB KESSLER AND
COMPANY.

MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT	AVG PRICE	RR NO.	COM- SAFETY
	700		PURITAN DENNETT CORP						7
	700		SEARS ROEBUCK & CO						9
	1100		SIGNODE CORPORATION						10
	11700		SONY CORP ADR NEW						15
	900		STANDARD OIL OF IND.						2
	11000		STORAGE TECHNOLOGY CORP						10
	11000		SYNTEX CORPORATION						10
	600		TEXAS INSTRUMENTS INC						6
	2800		TEXAS OIL & GAS CORP						28
	300		THOMAS & BETTS CORP						3
	300		XEROX CORP						3
			END OF ACCOUNT						
			PAGE 4						

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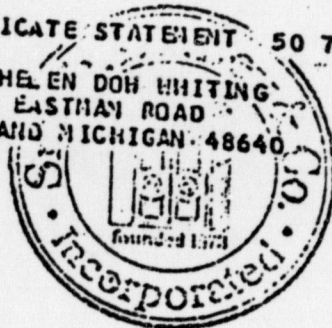
ACCOUNT NO.

NOV 30 1973

MARTIN GREIF
C/C GOLDBSTEIN GOLUB KESSLER AND
COMPANY
245 PARK AVENUE
NEW YORK N.Y. 10017

DUPLICATE STATEMENT 50 782343 1

MRS HELEN DOH WHITING
2203 EASTMAN ROAD
MIDLAND MICHIGAN 48640



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E. & O. E. A FINANCIAL STATEMENT OF THIS FIRM IS
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MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES				MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES		
DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
10 26			BALANCE FORWARD			
10 30			PCLARCO CORP			32401.1
10 30			MONTANA POWER CO	DIV CR		
10 31	30000		CENTENNIAL CORP PG SB SF	DIV CR		140.0
10 31			DEB CV 42 DEC 1992 JD	50	17975.00	675.
10 31	100		INTERNATIONAL BUSINESS			
10 31			WACHS CORP	287	28774.75	
10 31			STANDARD OIL CF INC.			
10 31	100		STANDARD OIL CF IND.	92 3/4	9346.75	
11 01	100		CHECK ISSUED	93 1/8	9327.25	
11 01			TEXAS INSTRUMENTS INC	DIV/CPN	3677.50	
11 02		40000	U S TREASURY BILLS	DIV CR		102.
11 02			NOV 23 1973			39817.
11 02			DOLLAR PRICE 99.581750			
11 05			7.17 BASIS			
11 06			DIC PEN CORP			
11 13			NIELSEN A C CO CL A N	DIV CR		140.
11 13	3000		DOW CHEMICAL CO	DIV CR		103.
11 13			CERT N778543 60 CU11839	57		169297.
11 13			3608 CU01276 CU39211			
11 13	1800		DOW CHEMICAL CO			
11 13			CERT N778543 60 CU11839	56 1/2		101022.
11 13			3608 CU01276 CU39211			
11 13	500		DOW CHEMICAL CO			
11 13			CERT N778543 60 CU11839	57 1/4		29442.
11 13			CU3608 CU01276 CU39211			
11 13	200		DOW CHEMICAL CO			
11 13			CERT N778543 60 CU11839	56 5/8		11251.
11 13			3608 CU01276 CU39211			
11 13			CONTINUED ON NEXT PAGE	1		

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ACCOUNT NO.

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JOHN GREIF
JOSEPH OSTEIN GOLUB KESSLER AND
SONS
100 PARK AVENUE
NEW YORK, N.Y. 10017

CATE STATEMENT 50 782343 1

JOHN DOW WHITING
EASTMAN ROAD
ANN ARBOR, MICHIGAN 48106



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MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
11 14						
11 14		3700	DOW CHEMICAL CO			140000.00
11 14			CERT N770543 60 CU11839	57 3/4		212272.65
11 14			CU3608 CU01276 NU39211			
11 14		800	DOW CHEMICAL CO			45693.85
11 14			CERT N778543 60 CU11839	57 1/2		
11 15	600000		CU3608 CU01276 NU39211			
11 15			U S TREASURY BILLS			
11 15			KGV 23 1973		598515.00	
11 15			DOLLAR PRICE 99.816667			
11 15	1100		9.25 BASIS			
11 19		760000	TEXACO INC			
11 19			U S TREASURY BILLS	32 3/8	36013.22	759203.85
11 19			KCV 23 1973			
11 19			DOLLAR PRICE 99.897222			
11 20			9.25 BASIS			
11 20	750000		MULTIMEDIA INC			
11 20			CHASE MANHATTAN CTF DEP			
11 20		100	DICK A B CO			185.50
11 20		200	DICK A B CO	20 1/4	750000.00	
11 20		800	DOW CHEMICAL CO	20 1/4		1535.15
11 20		1700	DOW CHEMICAL CO	55 1/4		3572.30
11 20		1300	DOW CHEMICAL CO	54 3/4		13300.60
11 20		70	DOW CHEMICAL CO	55 1/4		52130.00
11 21	300		DOW CHEMICAL CO	55 3/8		71330.00
11 21	500		DIGITAL EQUIPMENT CORP			3344.35
11 21	200		TEXACO INC	97	29324.25	
11 21	200		THOMAS & BETTS CORP	30 3/4	15593.95	
11 26	200		DIGITAL EQUIPMENT CORP	52	10546.74	
11 27	15000		CENTENNIAL CORP FG SB SF	58 1/2	15849.50	
			CONTINUED ON NEXT PAGE	49 1/2	7755.83	

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ASTMAN ROAD
D MICHIGAN 48640



STATEMENT SHOULD BE RETAINED SINCE IT
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MEMBERS NEW YORK STOCK EXCHANGE, INC. AND OTHER LEADING EXCHANGES

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
11 27			DEB CV 42 DEC 1992 JD			
11 27	210000		U S TREASURY BILLS			
11 27			DEC 27 1973		208709.50	
11 27			DOLLAR PRICE 99.378333			
11 28		200	7.46 BASIS			
11 28	200		CORNING GLASS WORKS	92		
11 28			H G I C INVESTMENT CORP	36 1/2	7414.66	18245.10
11 28		1000	TRADE AS OF 11/20/73			
11 28			STORAGE TECHNOLOGY CORP	13		12752.40
11 30			WE MAKE MKT IN SECURITY			
			BALANCE			36663.20
			SECURITY POSITIONS			
	145000		CENTENNIAL CORP RG SB SF			
	85000		DEB CV 42 DEC 1992 JD			
	210000		INDUSTRIAL NUCLEONICS RG			
	100000		CV SB CD 5 1/22 JUN 1991			
	100000		U S TREASURY BILLS			
	100000		DEC 27 1973			
	100000		ATLANTA GA ARPT RV DELTA			
	100000		AO1 5.6252 04/01/2000			
	100000		BALTIMORE MD PCLL/CTL RV			
	200000		MS1 6.0002 09/01/1998			
	100000		CHELSEA COUNTY WASH PUD 1			
			JJ1 5.0003 07/01/2013			
			DETROIT MICHIGAN PM			
			MAT 4.1902 01/04/1974			
			MIDLAND CO MICH PCLL CTL			
			FAL 5.5002 02/01/2003			
			CONTINUED ON NEXT PAGE			

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ASTHAN ROAD

MICHIGAN 48640



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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
	100000		PONTIAC MICH STADIUM CO			
	100000		MS1 5.875% 03/01/2002			
	100000		PORT CF N Y & N J AUTH			
	200000		JD1 6.000% 06/01/2008			
	100000		PUERTO RICO HIGHWAY AUTH			
	100000		JJ1 5.500% 07/01/2003			
	750000		SAN FRANCISCO CALIF P/H			
	1100		HAT 6.060% 03/15/1974			
	2200		WASHINGTON PUB PUR S/S			
	1800		JJ1 5.700% 07/01/2012			
	1000		CHASE MANHATTAN CTF DEP			
	500		9.375% 12/19/1973			
	1400		AMERICAN TEL & TEL CO			
	500		BIC PEN CORP			
	5900		BRIGGS & STRATTEN CORP			
	700		CENTRAL & SOUTH WEST CORP			
	1464		CCRNING GLASS WORKS			
	1800		DICK A B CO			
	1200		DIGITAL EQUIPMENT CORP			
	900		DOW CHEMICAL CO			
	1500		EASTMAN KODAK CO			
	475		EXXON CORP			
	1600		GARDNER-DENVER CO			
			HANNA MINING CO			
			HEWLETT-PACKARD CO			
			HUBBELL HARVEY INC			
			CL B			
			INTERNATIONAL BUSINESS			
			MACHS CORP			
			M G I C INVESTMENT CORP			
			CONTINUED ON NEXT PAGE			

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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
	1000		KEDYACNIC INC.			
	1500		MONTANA POWER CO			
	2650		MULTIMEDIA INC			
	1500		NIELSEN A C CO CL A NEW			
	500		PCLARCID CORP			
	700		PURITAN BENNETT CORP			
	900		SEARS ROEBUCK & CO			
	1300		SIGNODE CORPORATION			
	1900		SONY CORP ADR NEW			
	1000		STANDARD CIL OF INC			
	1000		SYNTEX CORPORATION			
	1600		TEXACO INC			
	600		TEXAS INSTRUMENTS INC			
	2000		TEXAS OIL & GAS CORP			
	1000		THOMAS & BETTS CORP			
	800		XEREX CORP			
			END OF ACCOUNT PAGE 5			

Smith, Barney & Co.
Incorporated
20 Broad Street • N.Y. N.Y. 10005

MOD ENDING

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ACCOUNT NO.

31 1973
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NY
ARK AVENUE
ORC N Y 10017

CATE STATBIENT 50 782343 1.

ELEN DOW WHITING
ASTHAN ROAD
D HIGHIGAN 48640

**SMITH
BARNEY**

ENTY SHOULD BE RETAINED SINCE IT
FORMATION YOU MAY NEED TO VERIFY
LINGS THAT APPEAR ON SUBSEQUENT
IT SHOULD ALSO BE RETAINED FOR
PURPOSES.

FINANCIAL STATEMENT OF THIS FIRM IS
AVAILABLE FOR YOUR PERSONAL INSPECTION
ITS OFFICES OR A COPY OF IT WILL BE
MAILED UPON YOUR WRITTEN REQUEST.

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
	150000		SECURITY POSITIONS			
	85000		CENTENNIAL CORP RG SB SF			
	150000		DEB: CV 42 DEC 1992 JD			
	100000		INDUSTRIAL NUCLEONICS RG			
	100000		CV SB DB 5 1/22 JUN 1991			
	200000		U S TREASURY BILLS			
	100000		MAR-20 1974			
	100000		ATLANTA GA: ARPT RV DELT			
	100000		AO1 5.625% 04/01/2000			
	100000		BALTIMORE MD POLL/CTL RV			
	100000		MS1 6.000% 09/01/1998			
	200000		CHELAN COUNTY WASH PUD 1			
	100000		JJ1 5.000% 07/01/2013			
	100000		DETROIT MICHIGAN PH			
	100000		MAT 4.190% 01/04/1974			
	100000		MIDLAND CO HIGH POLL CTL			
	100000		FA1 5.500% 02/01/2003			
	100000		PONTIAC HIGH STADIUM CO			
	200000		MS1 5.075% 03/01/2002			
	100000		PORT OF NY & N J AUTH			
	100000		JD1 6.000% 06/01/2008			
	200000		PUERTO RICO HIGHWAY AUTH			
	100000		JJ1 5.500% 07/01/2003			
	300000		SAN FRANCISCO CALIF P/H			
			MAT 6.060% 03/15/1974			
			WASHINGTON PUB PHR S/S			
			JJ1 5.700% 07/01/2012			
			MID ATLANTIC FUEL			
			CONTINUED ON NEXT PAGE			

Smith, Barney & Co.
Incorporated
20 Broad Street • N.Y. N.Y. 10005

MOD ENDING

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ACCOUNT NO.

31 1973

IN GREIF
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ARK AVENUE
ORK NY 10017

STATE STATEMENT 50 782343 1

LEN DOH WHITING
ASTHAN ROAD
D MICHIGAN 48640

BARNEY

THIS DOCUMENT SHOULD BE RETAINED SINCE IT
CONTAINS INFORMATION YOU MAY NEED TO VERIFY
FIGURES THAT APPEAR ON SUBSEQUENT
STATEMENTS. IT SHOULD ALSO BE RETAINED FOR
FUTURE REFERENCE.

FINANCIAL STATEMENT OF THIS FIRM IS
AVAILABLE FOR YOUR PERSONAL INSPECTION
AT ITS OFFICES OR A COPY OF IT WILL BE
FURNISHED UPON YOUR WRITTEN REQUEST.

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
	1100		10.0003 01/10/1974			
	2400		AMERICAN TEL & TEL CO			
	1800		DIC PEN CORP			
	1000		BRIGGS & STRATTON CORP			
	300		CENTRAL & SOUTH WEST CORP			
	1400		CORNING GLASS WORKS			
	1000		DICK A B CO			
	700		DIGITAL EQUIPMENT CORP			
	1464		EASTMAN KODAK CO			
	1800		EXXON CORP			
	1200		GARDNER-DENVER CO			
	900		HANNA MINING CO			
	1500		HEWLETT-PACKARD CO			
			HUBBELL HARVEY INC			
	475		CL B			
	1800		INTERNATIONAL BUSINESS			
	1000		MACHS CORP			
	1500		M G I C INVESTMENT CORP			
	2650		MEDTRONIC INC			
	1500		MONTANA POWER CO			
	500		MULTIMEDIA INC			
	700		NIELSEN A C CO CL A NEW			
	900		POLAROID CORP			
	1300		PURITAN BENNETT CORP			
	1900		SEARS ROEBUCK & CO			
	1000		SIGNODE CORPORATION			
	1000		SGNY CORP ADR NEW			
	2000		STANDARD OIL OF IND			
			SYNTEX CORPORATION			
			TEXACO INC			
			CONTINUED ON NEXT PAGE			

Smith, Barney & Co.
Incorporated
20 Broad Street • N.Y. N.Y. 10005

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ACCOUNT NO.

31 1973

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LEN DON WHITING
STMAN ROAD
MICHIGAN 48640

BARNEY

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ANCIAL STATEMENT OF THIS FIRM IS
BLE FOR YOUR PERSONAL INSPECTION
OFFICES OR A COPY OF IT WILL BE
UPON YOUR WRITTEN REQUEST.

DATE	BOUGHT RECEIVED OR LONG	GOLD DELIVERED ON SHORT	DESCRIPTION	PRICE	DEBIT	CREDIT
	600		TEXAS INSTRUMENTS INC.			
	2800		TEXAS OIL & GAS CORP.			
	1000		THOMAS & BETTS CORP.			
	800		KERGX CORP.			
END OF ACCOUNT PAGE 5						

A85

Plaintiff's Exhibit 17.

Handwritten notes by Macauley Whiting about a telephone conversation between Macauley Whiting and Allan Penwell of Harris Trust & Savings Bank (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

Allen Pencwell -

35% against margin Reg. Q
on market

\$130,000 other collateral -

$\frac{1}{4}$ over prime first
then $\frac{1}{2}$ over up to 5 yr.

Reasonable ~~at~~ break-out on personal statement

Pledge to collateral } coming from
Stock powers coming } Harris

With \$140,000 cash available
option stock will be adequate
collateral.

Harris can wire money to Dow account or
transfer.



A87

A88

Plaintiff's Exhibit 23.

Letter dated November 18, [1973], from Macauley Whit-
ing to Allan [Penwell] (2 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

MACAULEY WHITING
2203 EASTMAN ROAD
MIDLAND, MICHIGAN 48640

November 18

Dear Allan:

I received all the loan papers together with a nice letter from Mrs. Boehm. Thank you very much for having them sent.

In the meantime our situation has changed. We have been able to get the cash required from sale of stock and will not need the loan at this time. I asked my secretary to call this information

to you just as soon as I
learned of the change of
circumstances - and she
~~she~~ said that she was able
to get the message to you.

I am sorry to come up
with such an abrupt change
of signals. I think you
know better than I how
unsteady people are in this
stock market reversal.

Thank you very much
for your fast action. I trust
it will be okay for me to
keep the papers for possible
future use.

Sincerely,
Marc

A89

A90

Defendant's Exhibit C.

Macauley Whiting: SEC Forms 4 (Sept., Nov., Dec., 1973) (6 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

SECURITIES AND EXCHANGE COMMISSION • Washington, D. C. 20549

FORM 4 Statement of Changes in Beneficial Ownership of Securities

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(c) of the Public Utility Holding Company Act of 1935, or Section 301(f) of the Investment Company Act of 1940

1. NAME AND BUSINESS ADDRESS OF REPORTING PERSON		2. STATE OF INCORPORATION	3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED	4. NAME OF COMPANY	
Whiting Macauley LAST FIRST MIDDLE		Delaware		The Dow Chemical Company	
The Dow Chemical Company		5. IRS OR SS IDENTIFYING NUMBER OF REPORTING PERSON	6. STATEMENT FOR CALENDAR MONTH OF	7. DATE OF LAST PREVIOUS STATEMENT	8. RELATIONSHIPS OF REPORTING PERSON TO COMPANY (Instr. 4)
Midland, Michigan 48640 (ZIP CODE)		362 - 28 - 8742	Sept. 1973 MONTH YEAR	Aug. 1 1973 MONTH DAY YEAR	Director

TABLE I. Securities Bought, Sold or Otherwise Acquired or Disposed of

Furnish the information required by the following table as to securities of the company bought or sold or otherwise acquired or disposed of by the reporting person during the month for which this statement is filed (See Instruction 5) and as to securities

of the company beneficially owned, directly or indirectly, at the end of the month. However, transactions involving the acquisition or disposition of puts, calls, options or other rights or obligations to buy or sell securities of the company shall be reported in Table II.

1. TITLE OF SECURITIES (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. AMOUNT OF SECURITIES ACQUIRED (Instr. 10)	5. AMOUNT OF SECURITIES DISPOSED OF (Instr. 10)	6. CHARACTER OF TRANSACTION REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE PER SHARE OR OTHER UNIT (Instr. 13)	8. AMOUNT OWNED AT END OF MONTH (Instr. 10)	9. NATURE OF OWNERSHIP OF SECURITIES OWNED AT END OF MONTH (Instr. 11)
Common Stock \$5 par value)		No	Change				20,004	Direct
Common Stock \$5 par value)		9/17/73		2,000	Open Market Sale	\$57.00		
Common Stock \$5 par value)		9/18/73		8,000	Open Market Sale	\$56.50	565,686	Direct(a)
Common Stock \$5 par value)		No	Change				83,362	Direct(b)
Common Stock \$5 par value)		No	Change				17,160	Direct(c)
Common Stock \$5 par value)		No	Change				966	Indirect(d)

TABLE II. Puts, Calls, Options and Other Rights or Obligations

If during the month for which this statement is filed the reporting person acquired or disposed of any put, call, option or other right or obligation (all hereinafter referred to as "options") to buy or sell, or be required to buy or sell, securities of the company, furnish the information required by the following table. (See Instruction 5) However, the acquisition or disposition of transferable warrants issued by the company which give the right to buy securities of the company are to be reported in Table I. Options exempted by Rule 16a-6 need not be reported.

tion or disposition of transferable warrants issued by the company which give the right to buy securities of the company are to be reported in Table I. Options exempted by Rule 16a-6 need not be reported.

1. TITLE OF SECURITIES SUBJECT TO OPTION (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. NATURE OF OPTION (Instr. 15)	5. AMOUNT OF SECURITIES SUBJECT TO OPTION (Instr. 10)	6. CHARACTER OF TRANSACTION, IF ANY, REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE OF SECURITIES SUB- JECT TO OPTION (Instr. 13)	8. DATE OF EXPIRATION OF OPTION

Explanation of items in the tables:

- (a) Shares owned by wife and minor children.
- (b) Trustee for Children u/a dated 2-18-58 with Helen Dow Whiting.
- (c) Stock in name of Macauley Whiting, Tr. u/a/w Susan Dow Whiting dated 5-21-68.
- (d) These shares are credited to the undersigned as a result of the vesting provisions of the Company's Supplementary Retirement Plan.

U. S. GOVERNMENT PRINTING OFFICE: 1973 O - 505-145

US 50:0

October 4, 1973

DATE OF STATEMENT

SIGNATURE OF REPORTING PERSON

NOTE: If the space provided in either table is insufficient, use a continuation sheet which identifies the table and column to which it relates.

FORM 4 Statement of Changes in Beneficial Ownership of Securities

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

1. NAME AND BUSINESS ADDRESS OF REPORTING PERSON Whiting Macauley LAST FIRST MIDDLE The Dow Chemical Company		2. STATE OF INCORPORATION Delaware	3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED MONTH DAY YEAR	4. NAME OF COMPANY The Dow Chemical Company
5. IRS OR SS IDENTIFYING NUMBER OF REPORTING PERSON Midland, Michigan 48640 (ZIP CODE)		6. STATEMENT FOR CALENDAR MONTH OF November 1973 MONTH YEAR	7. DATE OF LAST PREVIOUS STATEMENT Oct. 4 1973 MONTH DAY YEAR	8. RELATIONSHIPS OF REPORTING PERSON TO COMPANY (Instr. 4) <input type="checkbox"/> Director

TABLE I. Securities Bought, Sold or Otherwise Acquired or Disposed of

Furnish the information required by the following table as to securities of the company bought or sold or otherwise acquired or disposed of by the reporting person during the month for which this statement is filed (See Instruction 5) and as to securities

of the company beneficially owned, directly or indirectly, at the end of the month. However, transactions involving the acquisition or disposition of puts, calls, options or other rights or obligations to buy or sell securities of the company shall be reported in Table II.

1. TITLE OF SECURITIES (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. AMOUNT OF SECURITIES ACQUIRED (Instr. 10)	5. AMOUNT OF SECURITIES DISPOSED OF (Instr. 10)	6. CHARACTER OF TRANSACTION REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE PER SHARE OR OTHER UNIT (Instr. 13)	8. AMOUNT OWNED AT END OF MONTH (Instr. 10)	9. NATURE OF OWNERSHIP OF SECURITIES OWNED AT END OF MONTH (Instr. 11)
Common Stock (\$5 par value)		12-27-73 No Change	21,420		Exercise of 6 shares	24,210.5	41,120.7 20,004	Direct
Common Stock (\$5 par value)		11/13/73		500	Open Market Sale	57-1/4		
		11/13/73		1,800		56-1/2		
		11/13/73		200	"	56-5/8		
		11/13/73		3,000	"	57		
		11/14/73		3,700	"	57-3/4		
		11/14/73		800	"	57-1/2		
		11/20/73		1,300	"	55-1/4		
		11/20/73		1,700	"	54-3/4		
		11/20/73		800	"	55-1/4		
		11/20/73		70	"	55-3/8		
		11/30/73		5,800	"	51-1/2	546,312 545,916	Direct(a)
		11/30/73		100		51-3/4		
Common Stock (\$5 par value)		No Change					83,362 17,160	Direct(b) Direct(c)

TABLE II. Puts, Calls, Options and Other Rights or Obligations

If during the month for which this statement is filed the reporting person acquired or disposed of any put, call, option or other right or obligation (all hereinafter referred to as "options") to buy or sell, or be required to buy or sell, securities of the company, furnish the information required by the following table. (See Instruction 5) However, the acquisition or disposition of transferable warrants issued by the company which give the right to buy securities of the company are to be reported in Table I. Options exempted by Rule 16a-6 need not be reported.

1. TITLE OF SECURITIES SUBJECT TO OPTION (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. NATURE OF OPTION (Instr. 15)	5. AMOUNT OF SECURITIES SUBJECT TO OPTION (Instr. 10)	6. CHARACTER OF TRANSACTION, IF ANY, REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE OF SECURITIES SUB- JECT TO OPTION (Instr. 13)	8. DATE OF EXPIRATION OF OPTION

Explanation of items in the tables:

- (a) Shares owned by wife and minor children.
- (b) Trustee for Children u/a dated 2-18-58 with Helen Dow Whiting.
- (c) Stock in name of Macauley Whiting, Tr. u/a/w Susan Dow Whiting dated 5-21-68.
- (d) These shares are credited to the undersigned as a result of the vesting provisions of the Company's Supplementary Retirement Plan.

U. S. GOVERNMENT PRINTING OFFICE : 1972 O - 505-588

DS 5016

December 3, 1973

DATE OF STATEMENT

SIGNATURE OF REPORTING PERSON

NOTE: If the space provided in either table is insufficient, use a continuation sheet which identifies the table and column to which it relates.

FORM 4 Statement of Changes in Beneficial Ownership of Securities

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(c) of the Public Utility Holding Company Act of 1935, or Section 30(f) of the Investment Company Act of 1940

1. NAME AND BUSINESS ADDRESS OF REPORTING PERSON Whiting Macauley LAST FIRST MIDDLE The Dow Chemical Company		2. STATE OF INCORPORATION Delaware	3. IF AN AMENDMENT GIVE DATE OF STATEMENT AMENDED MONTH DAY YEAR	4. NAME OF COMPANY The Dow Chemical Company
5. IRS OR SS IDENTIFYING NUMBER OF REPORTING PERSON Midland, Michigan 48640 (ZIP CODE)		6. STATEMENT FOR CALENDAR MONTH OF December 1973 MONTH YEAR	7. DATE OF LAST PREVIOUS STATEMENT Dec. 3 1973 MONTH DAY YEAR	8. RELATIONSHIPS OF REPORTING PERSON TO COMPANY (Instr. 4) <input type="checkbox"/> Director

TABLE I. Securities Bought, Sold or Otherwise Acquired or Disposed of

Furnish the information required by the following table as to securities of the company bought or sold or otherwise acquired or disposed of by the reporting person during the month for which this statement is filed (See Instruction 5) and as to securities

of the company beneficially owned, directly or indirectly, at the end of the month. However, transactions involving the acquisition or disposition of puts, calls, options or other rights or obligations to buy or sell securities of the company shall be reported in Table II.

1. TITLE OF SECURITIES (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. AMOUNT OF SECURITIES ACQUIRED (Instr. 10)	5. AMOUNT OF SECURITIES DISPOSED OF (Instr. 10)	6. CHARACTER OF TRANSACTION REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE PER SHARE OR OTHER UNIT (Instr. 13)	8. AMOUNT OWNED AT END OF MONTH (Instr. 10)	9. NATURE OF OWNERSHIP OF SECURITIES OWNED AT END OF MONTH (Instr. 11)
Common Stock (\$5 par value)		12/27/73	21,420		Exercise of Option	\$24.3125	41,424	Direct
Common Stock (\$5 par value)		12/27/73		9,534	Disposed of by Gift		\$36,382	Direct(a)
Common Stock (\$5 par value)		No Change					83,362	Direct(b)
Common Stock (\$5 par value)		No Change					17,160	Direct(c)
Common Stock (\$5 par value)		No Change					966	Indirect(d)

REMARKS: THREE COPIES ARE REQUIRED. ONE SHOULD BE MANUALLY SIGNED AND SUITABLE FOR REPRODUCTION.

(OVER)

FORM 4 (Continued)

TABLE II. Puts, Calls, Options and Other Rights or Obligations

If during the month for which this statement is filed the reporting person acquired or disposed of any put, call, option or other right or obligation (all hereinafter referred to as "options") to buy or sell, or be required to buy or sell, securities of the company, furnish the information required by the following table. (See Instruction 5) However, the acquisition or disposition of transferable warrants issued by the company which buy securities of the company are to be reported in Table I. Options 16a-6 need not be reported.

tion or disposition of transferable warrants issued by the company which buy securities of the company are to be reported in Table I. Options 16a-6 need not be reported.

1. TITLE OF SECURITIES SUBJECT TO OPTION (Instr. 8)	2. CUSIP NUMBER FOR SEC USE ONLY	3. DATE OF TRANSACTION (Instr. 9)	4. NATURE OF OPTION (Instr. 15)	5. AMOUNT OF SECURITIES SUBJECT TO OPTION (Instr. 10)	6. CHARACTER OF TRANSACTION, IF ANY, REPORTED (Instr. 12)	7. PURCHASE OR SALE PRICE SECURITIES SUBJECT TO OPTION (Instr. 11)

Explanation of items in the tables:

- (a) Shares owned by wife and minor children.
- (b) Trustee for Children u/a dated 2-18-58 with Helen Dow Whiting.
- (c) Stock in name of Macauley Whiting, Tr. u/a/w Susan Dow Whiting dated 5-21-68.
- (d) These shares are credited to the undersigned as a result of the vesting provisions of the Company's Supplementary Retirement Plan.

January 8, 1974
DATE OF STATEMENT

SIGNATURE OF REPORTING PERSON

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Defendant's Exhibit G.

Excerpts From Deposition of Dow Chemical Company
by William A. Groening, taken by plaintiff on 9/26/74.

* * * * *

(20) Q. Have you ever had any conversations with Mr. Whiting about Dow securities owned by him or his wife?
A. Yes.

Q. Could you tell me the substance of those conversations, starting with about 1949, to the best of your recollection? A. Mr. Whiting went on the board in 1959 and it was my practice, which started a few years before, and I can't tell you the exact date, if a new man came on the board I talked to him about his obligation under the Securities (21) Act and the Securities Exchange Act. I undoubtedly had a conversation with Mr. Whiting.

Q. Do you recall the substance of that conversation? A. No.

Q. Had you had any conversations with him since that time about his Dow securities? A. Yes. I recall a conversation with him with regard to the possible exercise of an option that was going to expire in early 1969. This was in late 1968, and I don't recall the exact circumstances, whether Mrs. Whiting was contemplating selling some shares or had sold some shares.

I don't recall. He was interested as to how that would relate to the exercise of the option that would expire in 1969.

I discussed the six-month rule with regard to 16-B and pointed out to him that there had to be a full lapse of six months. I think we got down to a question of talking about particular days.

As I recall, the entire matter became academic because he didn't exercise the option.

* * * * *

Defendant's Exhibit G.

(30) Q. I show you a document dated March 27, 1969. Are you familiar with that document? A. Yes.

* * * * *

(31) Did you discuss the contents of this memorandum with anyone? A. I don't recall.

Q. Specifically, do you recall any conversations with Mr. Whiting? A. My recollection is that I discussed the subject matter of this document with Mr. Whiting several months before I wrote the document; namely, the matter as to whether there were certain options expiring in June. I believe this was the conversation I previously alluded to.

* * * * *

(52) Mr. Groening, is it your specific recollection that in approximately the fall of 1968 you specifically, in words or substance, in a personal meeting with Mr. Macauley Whiting, advised him that the exercise of options in Dow would be considered a purchase for the purpose of the short swing profit provision of section 16-B?

Mr. Beattie: I object.

A. I answer "yes," subject to one qualification. It was a telephone conversation and not a personal meeting.

* * * * *

A94

Defendant's Exhibit G-5.

Memorandum of W. A. Groening, Jr., to Macauley Whit-
ing, *et al.*, dated 4/27/72 (2 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)



THE DOW CHEMICAL COMPANY

MIDLAND, MICHIGAN 48040

April 27, 1972

D. K. Ballman	A. P. Hanmer
E. B. Barnes	J. E. Johnson
R. B. Bennett	Max Key
C. B. Branch	J. M. Leathers
Melvin Calvin	H. H. Lyon
W. R. Dixon	Zoltan Merszei
H. D. Doan	P. F. Oreffice
L. I. Doan	L. D. Smithers
H. H. Dow	Macaulay Whiting
C. A. Gerstacker	G. J. Williams

cc: Lucille Dougherty

There have been some recent changes in the regulations of the Securities and Exchange Commission concerning reporting of changes in beneficial ownership of securities by officers and directors. As each of you is affected by these changes, I would like to outline them briefly for you:

1. The form of the report has been radically revised and will therefore look completely different than the previous reports that you have filed. Also, reports to the Securities and Exchange Commission must now be filed in triplicate, with one copy being filed with the Midwest Stock Exchange, as in the past. (Miss Lucille Dougherty will continue to provide the service of preparing the reports for you.)

2. The character of the transaction must be specified on the face of the form. The various categories into which the subject is broken down are more detailed than has been true on previous forms. The following are the categories which are now specified by the SEC:

Open market purchase	Acquired by gift
Open market sale	Disposed of by gift
Private purchase	Redeemed (called, matured, retired)
Private sale	Stock dividend
Acquired by inheritance	Stock split
Disposed of by bequest	Exercise of warrants
Exchange or conversion	Exercise of options
Exercise of rights	Other (specify)



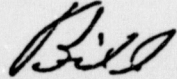
April 27, 1972
Page two

3. The purchase price or sale price, as the case may be, must be reported for each transaction.

4. If the officer or director acquires any puts, calls, options or similar rights or obligations, these must also be reported. Please note, however, that options received from the Company under its Option Plans do not have to be reported. This new requirement relates only to options from non-Company sources. It is, of course, necessary to report the exercise of an option received from the Company, the same as any other purchase.

Because of the new requirements, Miss Dougherty's task in preparing the reports for each of you will be more complicated. It will be necessary for you to report to her your purchase price or sale price, as well as the character of purchase or disposition as listed in Paragraph 2 above. Your cooperation in furnishing this information to her will be very much appreciated.

I would also like to take this occasion to call again to the attention of each of you the provision of the Securities and Exchange Act to the effect that if a purchase and sale, or sale and purchase, of Company stock occurs within the same six-month period, any profit realized by an officer or director on such a series of related transactions belongs to the Company and the officer or director is liable for the same in an action brought either by the Company or by any stockholder on behalf of the Company. To avoid such an unfortunate event, it is necessary that each of us carefully watch the timing of our purchases and sales of Company stock.


W. A. Groening, Jr.
Vice President and
General Counsel

A95

A96

Defendant's Exhibit H.

Letter from Macauley Whiting to Mr. Freedman, dated
10/6/57 (3 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

MACAULEY WHITING
2203 EASTMAN ROAD
MIDLAND, MICHIGAN

October 6, 1957

Dear Mr. Freedman -

I am writing to ask if you feel that you could help with the financial affairs of Mrs. Whiting and I; and if the answer to this is yes, then could we arrange to meet with you on the evening of Friday, October 18, to explore this?

While I don't believe that we have ever met, I do feel somewhat acquainted with you and your work from the many times that it came up in discussions with my grandfather, Alvan Macauley. I have certainly benefitted already

from your excellent counsel through the investments in the trusts established by Mr. Macauley.

Our financial situation is simple enough to be covered in a few words. Mrs. Whiting is one of the largest holders of common stock in The Dow Chemical Company - principally through bequests from her parents, Dr. & Mrs. Willard Dow. This stock constitutes substantially all her estate - and we have absolutely no interest in selling any part of this stock, since generation of income is not the primary reason for holding it.

However, we have felt for some time that there might be a good opportunity for "trading on the equity" in some fashion. One possible program might be to

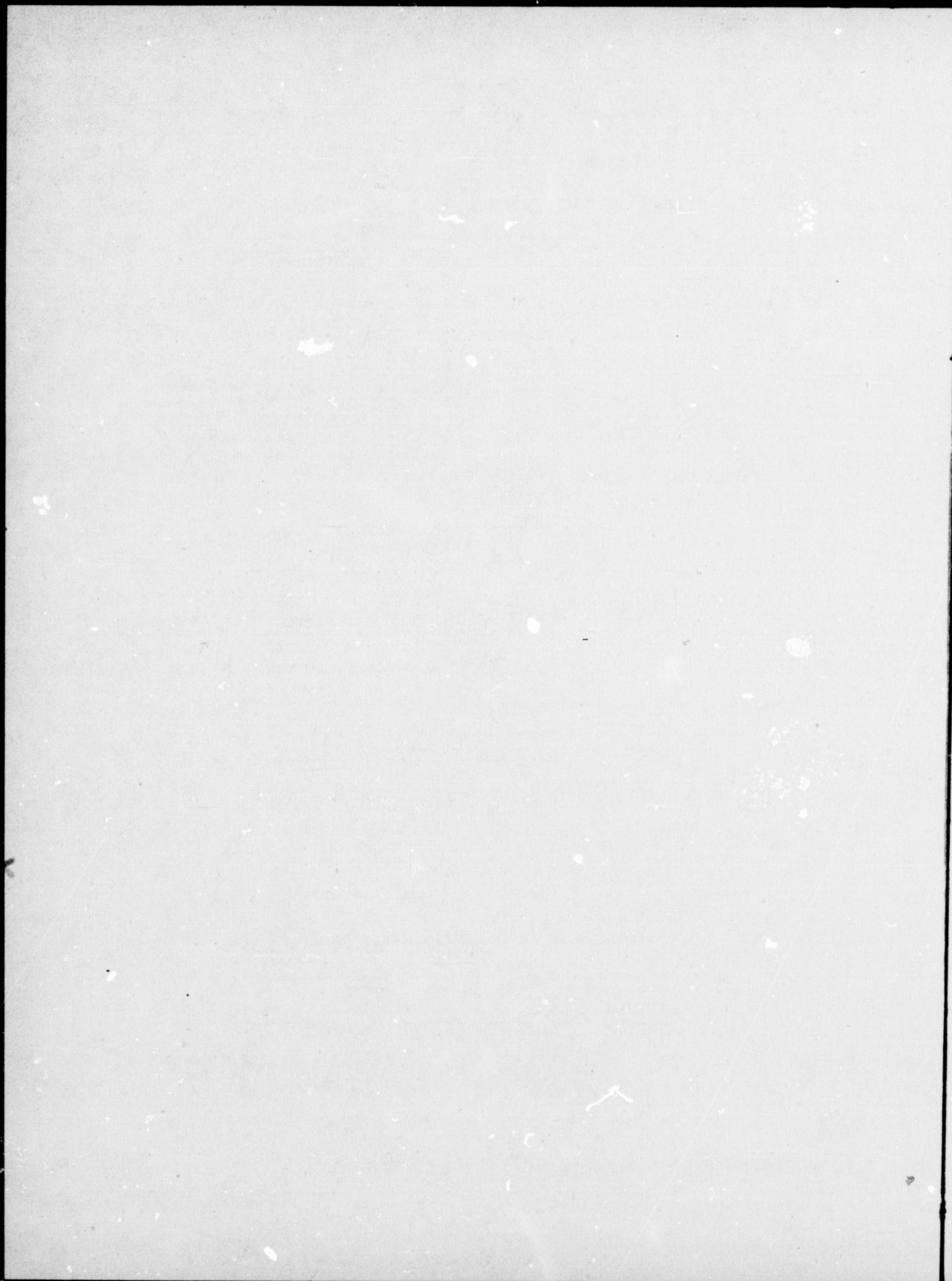
borrow money to purchase tax-exempt bonds. In this way we would hope to realize a considerably greater income after taxes with no direct involvement of our own capital. I am sure that you can think of many other means for accomplishing the same result.

This is the general area which we would like to discuss with you, if you feel that this type of counsel falls within your scope.

I have asked for the date of October 18 because we will be in Detroit that day and free after 5 p.m. Normally it is very difficult for us to get there other than on weekends.

I will look forward to hearing from you soon on this and will hope that we do have the opportunity of meeting.

Sincerely yours,
Maurice Whiting



A97

A98

Defendant's Exhibit I.

Freedman diary of communications re: Whitings,
10/17/57-11/27/72 (5 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

10/17/57 Macauley Whiting called.

10/18/57 Conference (-t Jennings Hospital) with Mr. and Mrs. Macauley Whiting - 7:00 - 8:45.

10/22/57 Conference with Lou Dahling re: Macauley Whiting.

11/29/57 Conference with Macauley and Mrs. Whiting.

12/ 3/57 Mr. M. Whiting called from Midland.

12/ 5/57 Called Macauley Whiting in Midland.

1/14/58 Macauley Whiting called from Midland.

7/21/59 Macauley Whiting called from Midland.

7/30/59 Called Macauley Whiting in Midland - talked with his secretary.

8/ 3/59 Called Macauley Whiting in Midland.

8/14/59 Harry's with Mr. and Mrs. Macauley Whiting - 7:15 - 10:15.

8/18/59 Called Macauley Whiting in Midland.

8/19/59 Called Macauley Whiting in Midland.

9/ 4/59 Mr. Pearse of NBD called re: Whiting account.

10/13/59 Macauley Whiting called from Midland.

12/ 2/59 Miss Ruth Perry called from Midland.

3/22/60 Miss Ruth Perry called from Midland.

7/21/60 Mac Whiting's secretary called from Midland re: an appointment for them tomorrow.

7/22/60 Macauley Whiting called from Midland.

7/27/60 Dinner conference at Caucus Club with Helen and Mac Whiting - 6:30 - 9:30.

9/29/60 Called Macauley Whiting in Midland.

1/17/61 Called Macauley Whiting in Midland. .

5/ 1/62 Mac Whiting called.

5/ 4/62 Dinner conference at Caucus Club with the Macauley
Whitings - 7:00 - 11:00 p. m.

7/ 9/62 Conference with Lou Dahling re: Macauley Whiting.

7/17/62 Macauley Whiting called re: Arthur Turner of Northwood
Institute. (see 7/19/62 reference).

6/18/64 Helen Whiting called (I was out).

6/19/64 Called Helen Whiting.

8/19/68 Macauley Whiting called.

8/22/68 Called Mac Whiting at Midland (he was out).

8/27/68 Macauley Whiting called.

9/ 4/68 Macauley Whiting called.

10/18/68 Macauley Whiting called (I was out).

10/21/68 Macauley Whiting called.

10/30/68 Conference and dinner with the Macauley Whitings at
London Chop House - 4:30 - 9:30.

11/ 4/68 Macauley Whiting and Helen Whiting called.

12/ 2/68 Miss Perry called.

12/18/68 Macauley Whiting called.

1/10/69 Helen Whiting called.

1/22/69 Macauley Whiting called.

2/13/69 Helen Whiting called.

2/14/69 Macauley Whiting called.

2/15/69	Macauley Whiting here.
4/12/69	Called Helen Whiting.
4/14/69	Helen Whiting called.
4/25/69	Macauley Whiting called.
5/16/69	Macauley Whiting called.
6/ 2/69	Helen Whiting called.
6/11/69	Called Macauley Whiting.
7/ 9/69	Helen Dow Whiting called.
7/17/69	Called Helen Whiting.
8/ 6/69	Helen Whiting called.
9/11/69	Helen Whiting called.
9/30/69	Called Helen Whiting.
11/ 3/69	Miss Perry called.
11/10/69	Helen Whiting called (I was out).
11/28/69	Macauley Whiting called.
12/10/69	Miss Perry called.
1/ 2/70	Ruth Perry called.
1/30/70	Ruth Perry called.
2/ 3/70	Helen Whiting called.
3/ 3/70	Helen Dow Whiting called.
3/18/70	Macauley Whiting called.
3/25/70	Called Ruth Perry.
5/18/70	Called Helen Whiting.
5/18/70	Macauley Whiting called.

5/19/70 Called Macauley Whiting.
 6/ 8/70 Macauley Whiting called.
 7/27/70 Macauley Whiting called.
 8/ 4/70 Dinner with Macauley & Helen Whiting at London Chop House.
 10/ 7/70 Macauley Whiting called.
 11/ 3/70 Called Helen Whiting.
 11/18/70 Helen Whiting called.

 1/25/71 Ruth Perry called.
 5/ 4/71 Called Helen Whiting.
 5/ 6/71 Helen Whiting called.
 5/10/71 Helen Whiting called.
 5/20/71 Mac Whiting called.
 6/10/71 Macauley Whiting called.
 6/18/71 Macauley Whiting called.
 6/22/71 Called Macauley Whiting.
 6/25/71 Helen Whiting called.
 7/ 7/71 Called Helen Whiting.
 7/14/71 Called Mac Whiting at Midland.
 7/20/71 Helen Whiting called (I was out). Left message re: Conoco.
 8/ 5/71 Helen Whiting called.
 8/30/71 Called Mrs. Whiting (she was out).
 8/31/71 Called Mrs. Whiting.
 9/20/71 Macauley Whiting called.
 10/25/71 Called Helen Whiting.
 11/ 1/71 Helen Whiting called.

11/11/71	Helen Whiting called.
1/12/72	Called Helen Whiting.
2/ 3/72	Macauley Whiting called.
2/ 4/72	Macauley Whiting called.
2/14/72	Helen Whiting called.
2/29/72	Helen Whiting called.
4/ 7/72	Called Helen Whiting.
6/ 8/72	Called Helen Whiting.
6/27/72	Called Helen Whiting.
8/ 3/72	Helen Whiting called.
8/28/72	Macauley Whiting called.
11/27/72	Called Helen Whiting.

A99

A100

Defendant's Exhibit J.

Letter [from Joseph Freedman] to Helen Dow Whiting,
dated 11/10/70 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

November 10, 1970

Mrs. Helen Dow Whiting
2203 Eastman Road
Midland, Michigan 48642

Dear Helen:

I am enclosing a duplicate deposit slip covering the check for \$100,000.00 which you mailed to me.

I have just purchased \$100,000 GMAC commercial paper due 5/11/71 on a 6-3/8% discount basis. I have also reinvested the proceeds that we will get from the \$70,000 commercial paper * due on November 12, in an equal amount of GMAC commercial paper due 1/11/71 on a 5-7/8% discount basis.

It was good to talk with you the other day, and I think the program is working out quite satisfactorily. With kindest regards to Mac and yourself, I am

Sincerely yours,

JL:jp
Enclosure

* 11/18/70 Helen Whiting called to say that
more money has to buy some more bonds
and she would need about \$55,000. I have
H.B.D. now the \$70,000 GMAC paper due 1/11/71

A101

A102

Defendant's Exhibit K.

Letter [from Joseph Freedman] to Mrs. Macauley Whiting, dated 5/14/71 (with handwritten attachment) (3 pp.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

May 14, 1971

Mrs. Macauley Whiting
2203 Eastman Road
Midland, Michigan 48640

Dear Helen:

I am enclosing a duplicate deposit slip covering the check for \$41,000 which you recently mailed to me.

You probably have already received confirmations from the National Bank covering the purchase of short-term securities. The securities purchased were as follows:

1. \$55,000 par GMAC Discount Notes due June 14, 1971, on a 4-1/2% discount basis. This will more than cover the \$53,000 amount of cash that you will need on June 15. ✓
2. \$25,000 par GMAC Discount Notes due August 31, 1971, on a 4-1/2% discount basis. This will more than cover the \$14,500 cash amount that you will need on September 1. ✓
At that time we can reinvest the extra cash that becomes available.
3. \$65,000 par U. S. Treasury Bills due August 12, 1971, on a 3.34% discount basis. I purchased these relatively short-term Treasury Bills so that we will be in a position to take advantage of any material increase in the short-term rates. When these Treasury Bills become due, or as we decide to sell them before maturity, we will invest the proceeds in such a way that you will still have the \$27,200 that you will require on April 15, 1972. ✓

You probably have received the corrected confirmation on the \$25,000 GMAC Notes referred to above. The original confirmation contained a service charge of \$15, which I had the Bank

Mrs. Macauley Whiting
May 14, 1971
Page Two

eliminate. As for the dealer fee on the Treasury Bills, we had no alternative but to pay this fee because the Bills were purchased in the open market.

With kindest regards to Mac and yourself, I am

Sincerely yours,

JF:kf
Enclosure

gmac 100,000

147.5

41.000

8,792.24

108.

41

179

53,800

4/15 ✓

14,500

9/1

8200

4/14 gmac 55,000

4/14

4/11

25,000

4/31

80,000

65,000 from bills

175

27,200

4/15 ✓ 1474

95,500

5/4/71

Whitney over ca. 85,000 & Hays-Tal Fund. Helen wanted to give out. I suggested giving Dow stock, and using the cash for part of the debt (95,000?) due to the bank. Whitney also wanted to give money to the City of Oakland (and 100,000 given). I told her how I would handle this (compare it to our 300,000) and that I would use Dow stock for that purpose. I suggested that if she follows my ideas, she drains all the tax problems and has tax consultant before committing herself to the plan.

6/25/71

Helen called. She is to send me check in the amount of ca. 95,000 the end of July, 1971, Aug. 1971 and Jan 1972. She will need 229,000 for taxes on Apr 15, 1972 (and 22,000 more for the 1st 20,000 from Angeles Tax). The balance of the Harris Trust note is 70,000. I suggested returning it now by 25,000 (which we have).

???

8/2/71

Called Helen. Suggested using proceeds of 25,000 from redemption of gmac notes to reduce bank loan at Harris Trust from 45,000 to 20,000.

11/1/71

11/2/71 note, 53,800 for taxes

11/1/71 -

103,000 for taxes (and 100,000 from bills and 11/1/71 15,000 from bills / can be for note from me

111

111



111

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111
111

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A103

A104

Defendant's Exhibit L.

Letter of Kent Noel Farr to Joseph Freedman, dated
1/28/72 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

EASTMAN DILLON, UNION SECURITIES & Co.

INCORPORATED
MEMBERS NEW YORK STOCK EXCHANGE, INC.

211 West Fort Street
Detroit, Michigan 48226

January 28, 1972

(313) 964-233

Mr. Joseph Freedman
1428 Buhl Building
Detroit, Michigan 48226

Dear Mr. Freedman:

I will check back with you to discuss the preliminary prospectus on Sunoco Exploration Partnership, Ltd.

Thank you.

Kent Noel Farr
Kent Noel Farr

KNF/vh

1/28/72

Mac writing

These units are now being offered. If you have any questions, Mr. Farr can answer them for you. If you do call him, tell him I asked you to talk to him. However, you can bring them from anyone else if you so prefer.

Joe F.



A105

A106

Defendant's Exhibit M.

Letter [from Joseph Freedman] to Helen D. Whiting,
dated 11/28/69 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

November 28, 1969

Mrs. Helen D. Whiting
2203 Eastman Road
Midland, Michigan 48640

Dear Helen:

After my discussion with Mac this morning regarding the purchase of 450 shares of Peoples Bank stock at \$43 for your account, I withdrew \$20,000 from your account at First of Michigan and deposited it in your National Bank of Detroit account, as shown by the enclosed duplicate of the deposit slip.

As I told Mac, all you have to do to pay for the stock is to draw a check on your account at National Bank of Detroit.

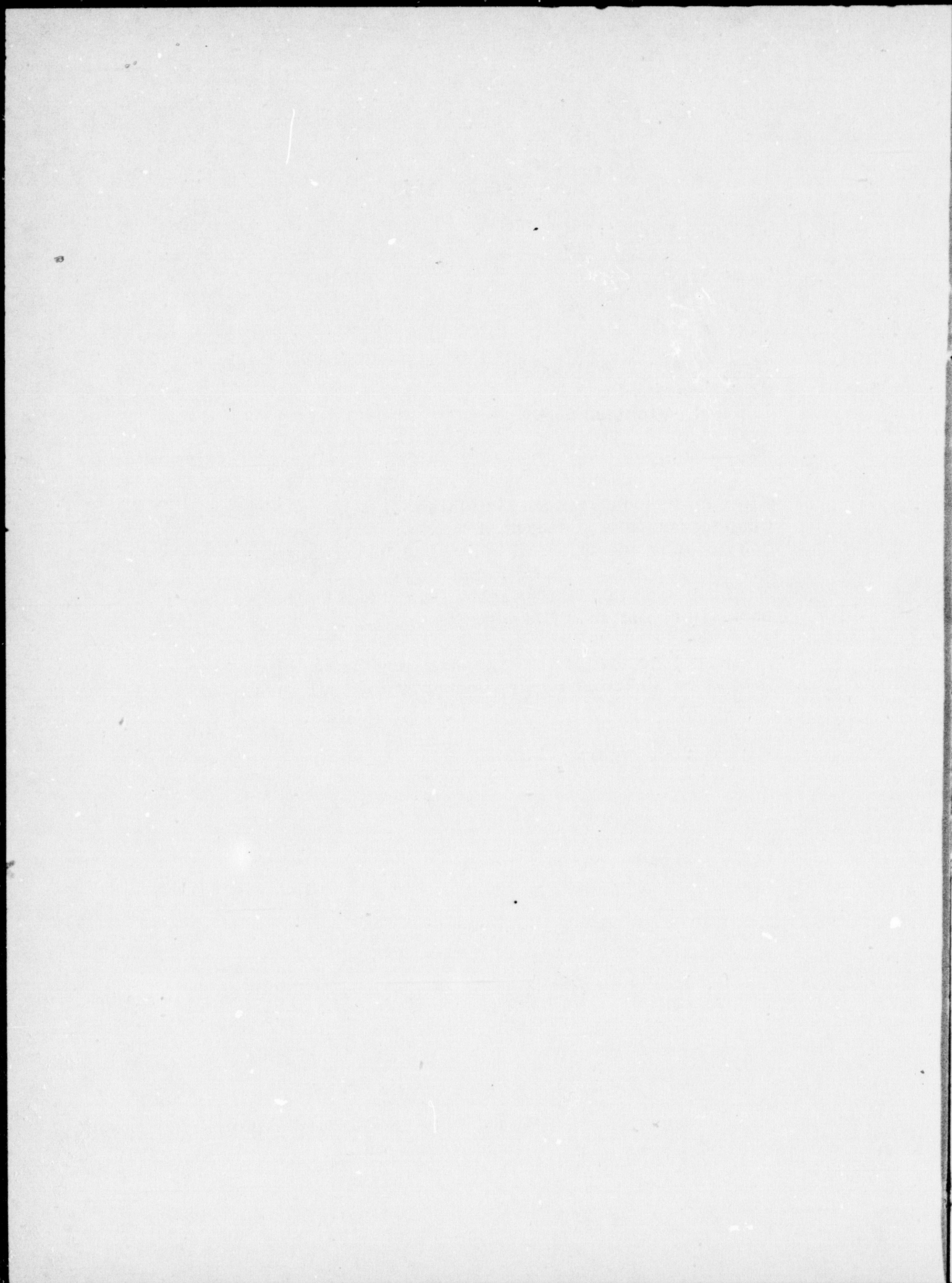
With kindest regards, I am

Sincerely yours,

JL:kf

Enclosure

cc: Miss Ruth M. Perry



A107

A108

Defendant's Exhibit N.

Letter from Macauley Whiting to Joseph Freedman,
dated 8/29/72 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

MACAULEY WHITING
2203 EASTMAN ROAD
MIDLAND, MICHIOAN 48640

August 29, 1972

Mr. Joseph Freedman
Griswold Research Co.
1428 Buhl Building
Detroit, MI

Dear Joe:

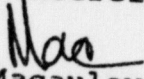
Following our decision to change tax accountants, this will confirm the feelings I tried to express to you on the phone yesterday. It was with great regret that Helen and I decided to sever our 12+ years association with you.

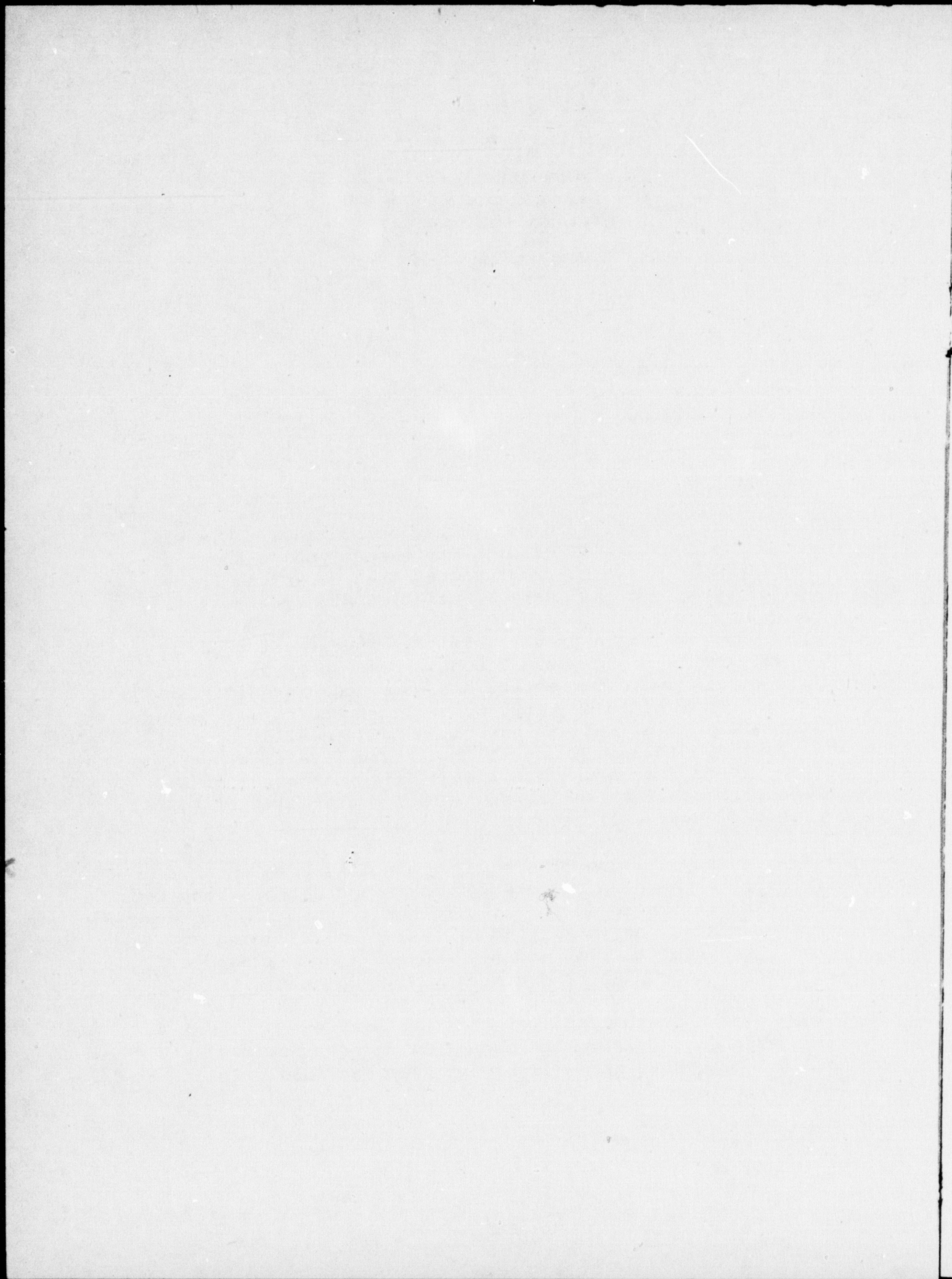
As you know, we had a pretty primitive investment program when we first came to you. You have been responsible for giving diversity to our estate and have made investments which we consider to be very good. The training you provided Helen in financial matters has given her a confidence that will be invaluable in years to come. You have been a trusted counselor and friend who has always given us more than we asked. We both feel we are students and disciples of yours, and we have been well taught.

As I am sure you sense, the move we are making is an aggressive one. We have no regrets for anything that has happened and are ambitious to do an extraordinarily good job of managing the estate. As you mentioned, tax laws are going to change. We want to plan and prepare for what may happen. The new tax accountant and attorney will do that with us.

I know that I don't 'owe' you this explanation, Joe. But I value your good opinion and hope this brief story may help hold it. You have and will always keep our good opinion and deep appreciation.

Sincerely,


Macauley Whiting



A109

A110

Defendant's Exhibit O.

Memorandum of C. B. Branch to Macauley Whiting,
et al., dated 3/30/72 (2 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)



THE DOW CHEMICAL COMPANY

MIDLAND, MICHIGAN 48640

March 30, 1972

Donald K. Ballman
Earle B. Barnes
Robert B. Bennett
Melvin Calvin
William R. Dixon
Herbert D. Doan
Herbert H. Dow
Carl A. Gerstacker
W. A. Groening, Jr.

A. P. Hanmer
Julius E. Johnson
Max Key
J. M. Leathers
Herbert H. Lyon
Zoltan Merszei
Paul F. Oreffice
LeRoy D. Smithers
Macauley Whiting
G. James Williams

Paul Oreffice and Bill Groening have brought to my attention a potential problem that could arise from the efforts of officers and directors of the company to utilize the so-called maximum tax provisions of the Internal Revenue Code.

It appears that a number of option holders are planning to exercise options in the very near future with the intention of selling some or all of the shares after a six-months' period for the purpose of making a "disqualifying disposition" which, of course, would be subject to the earned income maximum tax rate limitation. We are concerned as to the external appearance of such sales if several officers and directors should all be selling Dow stock in substantial quantities in the same short period of time such as the last quarter of 1972. I am sure you are all aware of the unfavorable publicity that ITT has received in recent days as a result of substantial numbers of its officers and directors selling ITT shares within a six weeks' period prior to the announcement of the settlement of its merger litigation with the U. S. Department of Justice.

We have always endeavored to be very careful that we comply with all of the "insider" rules of the SEC and as you know there have been times when we have asked officers and directors to refrain from dealing in Dow stock during a difficult period, such as the fall of 1970 when we were unable to quantify the Phrrix loss. We later released officers and directors from this request when we were able to determine and announce the amount of the loss that we were taking. We, of course, intend always to be on the

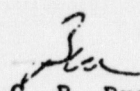


Page two
March 30, 1972

alert for such situations. We do have a problem, however, that whenever there is a sale by an officer or director and some bad news develops subsequently someone with the use of perfect 20-20 hindsight might allege that the officer or director acted on the basis of inside information. The problem could be compounded if several officers and directors all sold within the same brief period of time.

We would, therefore, like to suggest that officers and directors be especially careful in this particular area and to make sure that we do not accidentally walk into an "insider" trap we would like to suggest that any officer or director contemplating selling Dow stock check with Paul Orefice at the particular time to make certain that there is not some possible adverse Company news in the offing that might make such a sale unwise from a potential liability or adverse publicity point of view, or such a large number of shares being sold by officers and directors as to arouse suspicions of something unfavorable. In addition we would suggest that any officer or director contemplating a disqualifying disposition communicate this fact to Paul before exercising his option. This will help in long-range planning so as to avoid awkward situations. Paul, of course, will keep in touch with Bill Groening as to the legal aspects and will also consult with me to the extent needed.

I dislike suggesting this kind of a control as it might appear to some that we are interjecting ourselves into your personal business, but I am afraid that in this day and age this is one of the prices that we must pay for being directors or officers of a large corporation.


C. B. Branch
President

A111

A112

Defendant's Exhibit P.

Letter from Macauley Whiting to Paul R. Oref^{ce}, dated
4/26/72 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

cc: WAG



THE DOW CHEMICAL COMPANY

MIDLAND

April 26, 1972

MIDLAND, MICHIGAN 48640

G. B. Whiting

Paul F. Oreffice
2030 DOW CENTER

In response to Ben's letter of March 30 concerning the disposition of Dow stock by officers and directors, I would like to articulate our family policy for such disposition in order to forestall any suspicion of action based on inside information.

It is our intention to dispose of between 2 and 3% of our family holdings every year for the indefinite future. This policy will mean a decrease in our share of the equity of Dow, but presumably the absolute value of our holdings will continue to grow.

The timing of dispositions is under the control of our investment counselor. He has received from me no guidance as to when to dispose, except as in early 1971, I suspended the disposition program because of insider information considerations.

By way of background, for over 20 years every investment counselor we have talked to has said that it was only prudent to diversify and get some of our investment eggs out of the one (Dow) basket. Finally, we are heeding this advice, not because we have diminished faith in Dow, but rather because we have grown old enough to listen; and Dow seems to have plenty of aspiring investors.

Under the above circumstances, it seems awkward to have our investment counselor contact me when he wants to sell and when I, in turn, have to find you. With your concurrence, I would propose not to contact you on specific dispositions in line with this long-term plan. However, if they are disqualifying dispositions of option stock, I would contact you. Does that meet with your approval?

Mac
M. Whiting

jkd



A113

A114

Defendant's Exhibit S.

Stanley Goldstein & Company: Conference report, dated
12/8/72 (3 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

STANLEY GOLDSTEIN & COMPANY

CONFERENCE REPORT

DATE: December 8, 1972

CLIENT: Macauley and Helen Dow Whiting

LOCATION: Stanley Goldstein & Co.

CONFERENCE DATE: Nov. 20, 1972

TIME: Started -
Ended -

CONFEREES: Macauley and Helen Dow Whiting
Stuart Kessler
Martin Greif
Mark Rickabaugh (lunch)

SUBJECT: 1972 Individual Income Tax Planning
Foundation Distributions

COMMENTS: Coordination with Smith Barney & Co.

The 1972 income tax projections were discussed, showing an estimated Federal 1971 income tax balance due of approximately \$260,000 and an estimated Michigan 1971 balance due of approximately \$6,000 on April 16, 1973.

For these projections, certain assumptions were made and certain data was omitted, the most material factors being:

1. Computations were made without respect to:
 - a. Ware Corporation loss
 - b. Security transactions other than the sale of 13,070 shares of Dow Chemical stock.
 - c. Mr. Whiting's 1972 executive compensation award.
 - d. 1972 casualty loss.

2. It was assumed that the taxpayers' charitable contribution to the Macauley and Helen Dow Whiting Foundation would aggregate \$100,000 (F.M.V.) in 1972. (see below)

It was decided to leave the fourth quarter Michigan estimate at \$6,000. (mailed to Michigan 11/30/72 - MG).

Mr. Whiting said that the 1972 contribution to the Macauley and Helen Dow Whiting Foundation would aggregate 20% of adjusted gross income less other contributions made during the year. Adjusted gross income should approximate \$1,160,000 for the year, without regard to any loss recognized from the Ware Corporation's operations.

Our November 1, 1972 letter regarding the recommended procedure for the distribution of "income" by said Foundation was discussed. It was decided that the distribution by March 15 should approximate an amount equal to \$95,000 (revised and "rounded up") plus 100% of contributions received in 1972, subject to the conditions in said letter.

STANLEY GOLDSTEIN & COMPANY

CONFERENCE REPORT

DATE:

CLIENT: Macauley and Helen Dow Whiting

LOCATION:

CONFERENCE DATE:

TIME: Started -
Ended -

CONFEREES:

SUBJECT:

COMMENTS:

page 2

Therefore, if the contribution to The Foundation aggregates approximately \$150,000 in 1972, (20% x A.G.I. = \$232,000 less other individual contributions: \$50,000 (Midland), \$28,000 (Midland), \$4,000 Miscellaneous), The Foundation will have to make qualifying distributions of approximately \$245,000 prior to March 15, 1973. As previously mentioned, this amount may have to be increased by the amount of the first quarter Dow dividends received by the Foundation.

The taxpayers would submit applicable documentation to the Foundation for reimbursement of expenses regarding the Board of Directors' meeting held in California with Nathaniel S. Channin, trustee.

Stuart Kessler called Mr. Channin in La Jolla to discuss outstanding questions relative to the trusts. Mr. Channin agreed that the shares of stock "transferred" to the children in satisfaction of the trusts' distribution should be physically delivered to the children rather than remain commingled with the trustees shares.

He said that Mr. Scholler should have the information. SK will write to Mr. Scholler.

As to the activities of the Ware Corporation, Stuart Kessler called Mr. Pope to inquire as to outstanding questions and request prior years' tax returns. Mr. Pope was to furnish these but has not to date. SK has written to him.

Our letter of November 9, 1972 was discussed, relative to income tax payments and the source of these payments. It was decided that:

1. Smith Barney & Co. would "withhold" and invest for income tax purposes, 35% of the proceeds from all long-term capital gains.
2. The applicable tax due from U. S. Treasury interest income would come from the proceeds therefrom.

STANLEY GOLDSTEIN & COMPANY

CONFERENCE REPORT

DATE:

CLIENT: Macauley and Helen Dow Whiting

LOCATION:

CONFERENCE DATE:

TIME: Started -
Ended -

CONFEREES:

SUBJECT:

COMMENTS:

page 3

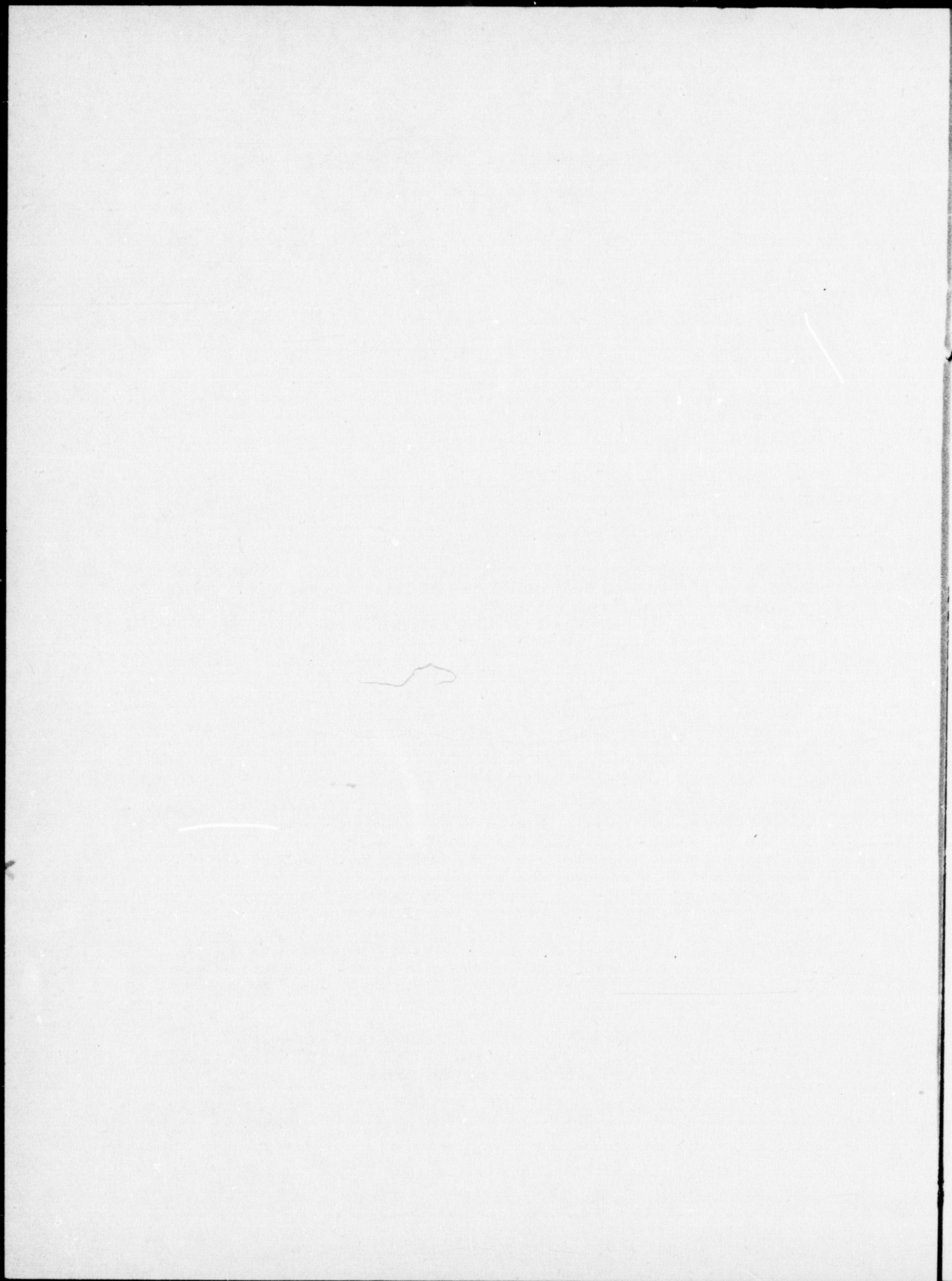
3. Mrs. Whiting would send to our office (payable to Smith Barney & Co.) a check for the Dow dividends in excess of \$35,000. (This figure was agreed upon as quarterly living expenses subject to adjustments after an experience period.) This would be invested for subsequent income tax payments.

A certified letter was mailed to the Cleveland Trust Company on behalf of the Trust for Helen Adeline Whiting, which never received their Dow Chemical Co. stock certificate for 2,349 shares. Mr. Whiting also noted a discrepancy between his holdings in Dow Chemical and the number of share certificates received.

Mark Rickabaugh joined us for lunch, during which future tax legislation was discussed, as well as investment philosophy and municipal bond holdings. The opening of a bank account in New York City was suggested, so as to facilitate income tax payments in the future and insure clearance of checks. SK was to check on estate implications which proved to be no obstacle. (The account will be opened sometime in December -MG)

After lunch, Mark departed and the meeting was continued in Stuart Kessler's office. Marty Greif is to prepare the intangibles tax returns early in December, and a trip to Midland was scheduled tentatively for January 21.

Miss Perry's stock transaction calculations were then reviewed and it was agreed that the task of making them intelligible was very involved, but that we would undertake the task.



A115

A116

Defendant's Exhibit T.

Stanley Goldstein & Company: Conference report, dated
5/31/73 (3 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

STANLEY GOLDSTEIN & COMPANY

CONFERENCE REPORT

DATE: May 31, 1973

CLIENT: Macauley and Helen Dow Whiting

LOCATION: Offices of Stanley Goldstein & Company

CONFERENCE DATE: May 18, 1973

TIME: Started -
Ended -

CONFERENCEES: Mr. & Mrs. Macauley Whiting
Stuart Kessler
Martin Greif
Mark Rickabaugh

SUBJECT:

COMMENTS:

The meeting began with a general discussion of the proposed tax legislation and specifically, how this legislation would effect the Whittings if it became law. The concept of "minimum taxable income" (MTI) appeared to be the major relevant consideration in the proposed bill. It was pointed out that if this concept had been present in the tax law for the year 1972, the Whittings' federal income tax would have been increased by approximately \$63,000. It was recommended that if this bill were passed in substantially the form it has been presented, the new minimum taxable income would be effective for years beginning after December 31, 1973 and, therefore, the alternative tax on capital gains would still apply for the taxable year 1973. Within the bounds of Rule 144, sales of Dow stock would be made in 1973.

Mark Rickabaugh then discussed the stock market in general and economic trends. His feeling was that the market still had, strong indicators and in the long run, would probably pull out of the doldrums that it presently was in. Stu suggested that perhaps a greater investment in municipal bonds from the present \$350,000 to somewhere between \$500,000 and 1 million be made. This point was discussed in light of the proposed legislation which will offer a new type of taxable municipal bond. It was the general feeling that this new type of bond and the proposed legislation would not substantially effect the value of present municipal investments.

Mrs. Whiting asked if they should liquidate all of their securities other than Dow and invest the proceeds in municipals. Mark responded to this by saying that the market should be strong in 1974. Even though there is a present bear market, he felt a diversification in other stocks and bonds was just as essential as investment in tax free municipals. The general discussion that followed considered outside factors such as inflation and Watergate and their effect upon the market. The consensus seemed to be that there should be greater investment in municipal bonds as well as a portfolio of common stock other than Dow Chemical.

The conversation moved on to estate planning. Mr. Whiting expressed his concern about keeping a control on tax shelters and other non-marketable investments. He would like to set a goal each year (the shelters which the Whitings have presently invested in have these projections in their prospectuses) and check this goal with the results to see if it is worth continuing in the presently held shelters. Similar projections would be made for all new investments. As this concept was discussed, a net worth worksheet, to be prepared periodically, evolved. Stuart Kessler is to devise the form and submit it to Mr. Whiting for his review and suggestions. The proposed form is attached to this conference report.

Smith, Barney & Co. will submit to the accountants the cost and market values of all of the Whitings' security holdings. One such run will be prepared as of May 31 to enable Marty and Stu to experiment with the format. The second run will be prepared by Smith, Barney & Co. as of June 30, 1973 for the first report to be prepared and submitted as of that date sometime in late July or early August.

The conference then moved on to a discussion of whether Mr. Whiting should exercise his options in Dow Chemical in 1973 or 1974. The initial indication is that the exercise should be made in 1973 because of the adverse tax consequences which might result from the proposed tax bill if the exercise were postponed until 1974. Marty Greif is to prepare a projection comparing the tax consequences of the sale of Dow stock versus the exercise of stock options. The projection will take into account the proposed legislation.

After the above is accomplished, Mr. Whiting would like a projection as to what their estate will look like five years into the future. Mark Rickabaugh will provide the information as to Dow and other common stock, taxable versus tax exempt bonds. Marty and Stu will coordinate with him on the above as well as supplying information as to tax shelters. In the projection, Mark is to provide growth rates, while taking into account gross national product, inflation, etc.

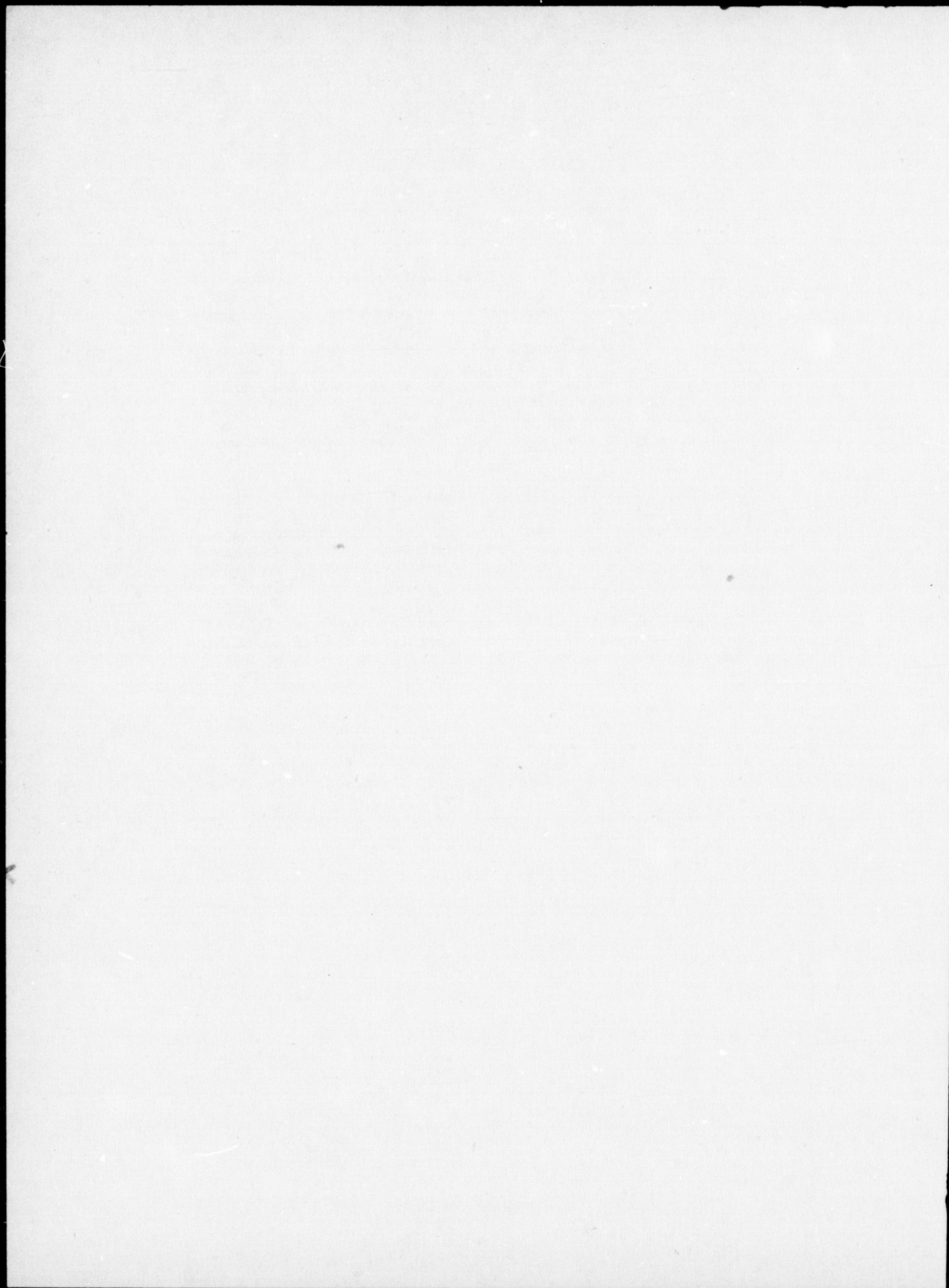
Mr. Whiting requested that we compare the Whitings' estate to other family estates on an anonymous basis. At the end of any given calendar year he would like to know whether the percentage increase/decrease in the Whitings' estate compares favorably to that of other family estates which we service.

A discussion followed concerning Martha's trust which is to be terminated this year. Letters will have to be sent to the transfer agent to transfer the shares from Macauley Whiting, as Trustee, to Martha Whiting. It was also decided that the final trust return for the 1958 Susan Dow Whiting Trust will be filed at the end of this year.

At this time we adjourned to the Iperbole for lunch, with Mark going back to his office for an afternoon meeting with the Whitings. At lunch we discussed the effect of a sale versus a contribution of Dow Chemical stock. Marty pointed out that under certain circumstances, and under the present tax set-up, it may be advantageous to make contributions of Dow stock as opposed to and or in conjunction with selling the same stock. He had prepared a worksheet showing the comparison and gave the worksheet to the Whitings for their further review. In addition, a copy of the proposed tax legislation of 1973 was xeroxed for them.

Another luncheon topic was that of the contribution of stock to the Midland, Michigan community foundation. Stu offered to discuss any problems which the Midland attorney might have with him. (A subsequent call from Mrs. Whiting indicated there were problems and Marty is to get back to Mrs. Whiting on this topic).

Finally, a further invitation was made to have the Whiting children either as a group or individually meet with us to discuss this holdings and financial and tax planning in general.



A117

A118

Defendant's Exhibit U.

Goldstein, Golub, Kessler & Company: Conference report, dated 10/29/73 (2 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

GOLDSTEIN, GOLUB, KESSLER & COMPANY

CONFERENCE REPORT

DATE: October 29, 1973

CLIENT: Macauley and Helen Dow Whiting

LOCATION: Goldstein, Golub, Kessler & Company

CONFERENCE DATE: October 29, 1973 TIME: Started - 9:15 a.m.
Ended - 12:30 p.m.

CONFEREES: Mr. & Mrs. Macauley Whiting
Stuart Kessler
Martin Greif

SUBJECT: Tax Planning

COMMENTS:

The meeting commenced with a discussion of the proposed investment reports. It was decided that initially the reports would be prepared annually, with the first report to be issued as of December 31, 1973. Stocks and municipals would be listed individually therein, with the possibility that comparative figures as of December 31, 1972 would be included. Mrs. Whiting would be notified as to the data needed from her, and Mark Rickabaugh will be called regarding the data he can furnish. In the future, the advisability of preparing semi-annual reports will be discussed.

11-33
The conversation turned to the area of estate planning. Mr. Whiting stated that the aim up to 1978 regarding divestment of Dow Chemical securities is the present program for 1973 with the program reverting to 2% per annum thereafter. All of this is subject to adjustment depending upon the growth and success of Dow Chemical Company.

END
It was suggested that Mr. Whiting exercise his options in Dow Chemical, in total, this year, due to the adverse consequences which could result upon the exercise in 1974 if the proposed concept of minimum taxable income becomes law. All other things being equal, the exercise of the stock options under current law would result in a minimum tax of approximately \$55,000 (after considering other items of tax preference and the carryover against the minimum tax) as opposed to a tax of approximately \$300,000 if the exercise took place after the proposed concept of minimum taxable income became an integral part of the law. Therefore, there is an initial difference of approximately \$245,000, although under the proposed law the stock basis would be increased by the attributable amount of the increase in taxable income. The question of the best method of funding the said exercise was discussed, together with the tax and economic consequences of intra-family borrowing as opposed to borrowing from a third party. It was suggested that Mrs. Whiting loan a portion of the purchase price to Mr. Whiting at an interest rate of 6%. The Whitings took this suggestion under advice.

ROUTED TO:
① SG
② AM
③ LR
④ SK
⑤ ML
⑥ CG
⑦ RM
⑧ PR
⑨ FK
⑩ SF

LAST

The conference then moved to a discussion of the Whitings' existing wills, which were reviewed by SK and appear to be, for the most part, in accord with their present feelings. However, it was decided that the substitute co-executor would be changed from one of their daughters to one of their sons, and that one of the further substitute executors would be eliminated.

Mr. Whiting mentioned that the Midland Community Foundation is expecting a ruling by November 1 from the Internal Revenue Service as to its status. Subsequent to the receipt of said ruling, the Macauley and Helen Dow Whiting Foundation will be making a sizable gift to the Midland Community Foundation in the form of appreciated Dow Chemical securities. Marty Greif was to draft a proposed letter to be sent by the Whiting Foundation to the Community Foundation relative to operations and expenses incurred to date.

Sig Goldner joined the meeting to discuss the cost basis of the Dow securities held by the Whitings. Sig has already made extensive investigation of the basis of Mrs. Whiting's shares and has for the most part come within pennies of the basis Mrs. Whiting is using. It was decided that rather than spend an inordinate amount of time, Sig would produce new worksheets with the adjusted basis of Dow by lots, and that proper allocations of recent stock splits and their appropriate basis adjustments would be made. This should be completed prior to December 15 and forwarded to Mrs. Whiting.

As to the trusts, final returns will be filed at the end of this year for Martha's trust and for the 1958 Susan Dow Whiting trust. Marty Greif will draft proposed letters to be sent to the transfer agent to transfer the shares from Macauley Whiting, as trustee, to the respective beneficiaries.


The Whitings mentioned that they were interested in having Martha meet with a securities broker on the West Coast to manage an investment portfolio for her. They will contact Mark Rickabaugh or Bill Cotter. In addition, Stan Goldstein would attempt to suggest such a broker.

The utilization of short-term trusts were discussed, with the objective being to maximize after-tax dollars within the family unit. Calculations were presented which showed an advantage to this tax planning tool. However, the advantage was not considered to be sufficient to offset the costs of setting up such an entity, as well as the record-keeping requirements involved. *ENTITIES*

The question of whether to transfer funds to foreign countries, as well as the feasibility of foreign investments, was brought up. It was decided to bring this issue up again upon a subsequent meeting.

Marty Greif was to prepare tax calculations comparing the sale of additional Dow shares this year, as opposed to a sale of Dow securities in light of proposed legislation.

After a short lunch, the meeting ended with the parties deadlocked as to whether Verner's ginger ale or Dr. Brown's Cel-Ray soda held the upper hand. Apparently, it will take several more comparisons to decide.



A119

A120

Defendant's Exhibit W.

Checks of Macauley Whiting and Helen Dow Whiting,
dated 12/27/73 (2 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

MACAULEY WHITING
2203 EASTMAN RD.
MIDLAND, MICH. 48640

426

Dec. 27 1973 74-1226
764

PAY TO THE ORDER OF The Dow Chemical Company \$520,773.⁷⁵
Five Hundred Twenty Thousand Seven Hundred Seventy Three and 75/100 DOLLARS

First NATIONAL BANK
A TRUST COMPANY OF MIDLAND • MICHIGAN

Macaulay White

⑆0764⑈1226⑆011042082⑈⑈0052077375⑈

HELEN DOW WHITING
2203 EASTMAN ROAD
MIDLAND, MICHIGAN 48642

3983

Dec. 27 1973 2-28
710

PAY TO THE ORDER OF MACAULEY WHITING \$520,773.75
FIVE HUNDRED TWENTY THOUSAND SEVEN HUNDRED SEVENTY THREE DOLLARS AND 75/100 -----DOLLARS

1 2 2 8 7 3

HARRIS Trust and Savings BANK
CHICAGO, ILLINOIS

Helen Dow White

⑆0710⑈0028⑆967⑈304⑈7⑈⑈0052077375⑈

5201
P2

AND THROUGH
 DETROIT CLEARING HOUSE
 PAY TO THE ORDER OF AMER-
 ICA BANKER TRUST COMPANY
 100 GUARANTEE
 27-1973
 9-2
 120
 THE DETROIT BANK
 AND TRUST COMPANY
 DETROIT, MICH.
 9-2
 120

DEC 23 '73

FRANCIS

DEC 3 1973

[Faint, illegible markings]

31.73 757 3863

525702

71

A121

A122

Defendant's Exhibit X.

Note by Macauley Whiting to the order of Helen Dow Whiting, dated 12/27/73; memorandum from Macauley Whiting to Helen D. Whiting, dated 5/11/74 (2 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

Shirley Whiting

\$520,773.75

December 27, 1973

On demand, the undersigned for value received, promises to pay to the order of Helen Dow Whiting, of Midland, Michigan, the sum of Five Hundred Twenty Thousand Seven Hundred Seventy Three Dollars and Seventy Five Cents (\$520,733.75), together with interest thereon at the rate of seven percent per annum. Demand for payment, protest, presentment, note of dishonor and extension of time for payment are waived by all who become parties to this note.

2203 Eastman Road,
Midland, Michigan
Address of Maker

Macauley Whiting
Macauley Whiting

May 11, 1974

Helen D. Whiting

Payment on loan:

Interest @ 7% from

Dec. 27, '73 \$ 13,483.05

Principal payment 10,773.75

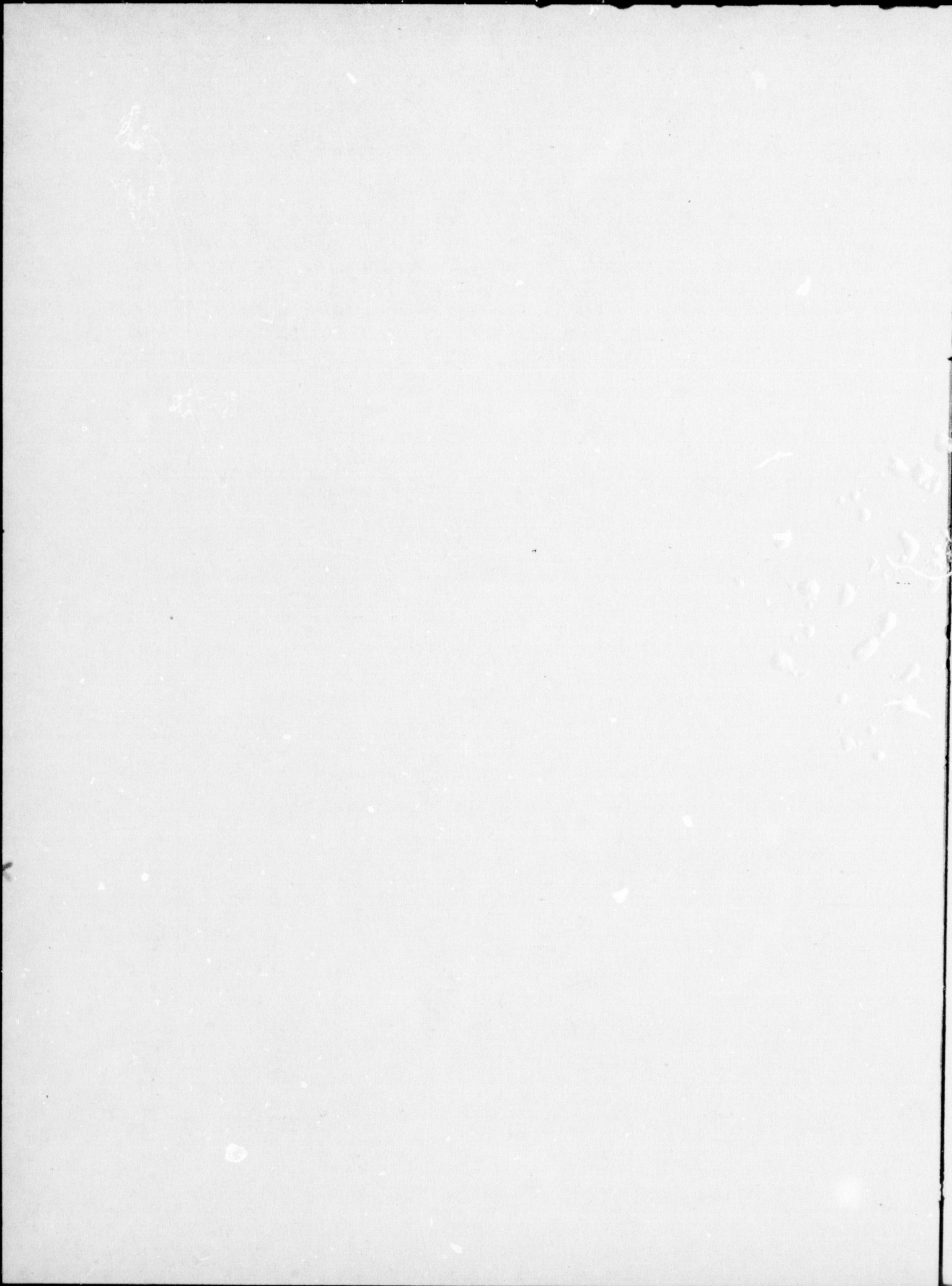
Total \$ 24,256.80

Balance due on principal

\$520,773.75

10,773.75

\$510,000.00



A123

A124

Defendant's Exhibit DD.

"Partial Schedule of Income for Helen Dow Whiting
(from joint federal income tax return)," 1971-1973 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

Partial Schedule of Income for Helen Dow Whiting*
(from Joint Federal Income Tax Return)

1973

Dow Income

Capital Gains	\$3,019,471.00
Dividends	<u>546,962.00</u>
Total	\$3,566,433.00

Gross Income from Return

Capital Gains	\$3,064,183.00
Dividends	591,150.00
Interest	<u>50,128.00</u>
Total	\$3,705,461.00

1972

Dow Income

Capital Gains	\$1,173,091.00
Dividends	<u>559,822.00</u>
Total	\$1,732,913.00

Gross Income from Return

Capital Gains	\$1,185,845.00
Dividends	603,159.00
Interest	<u>6,707.00</u>
Total	\$1,795,711.00

1971

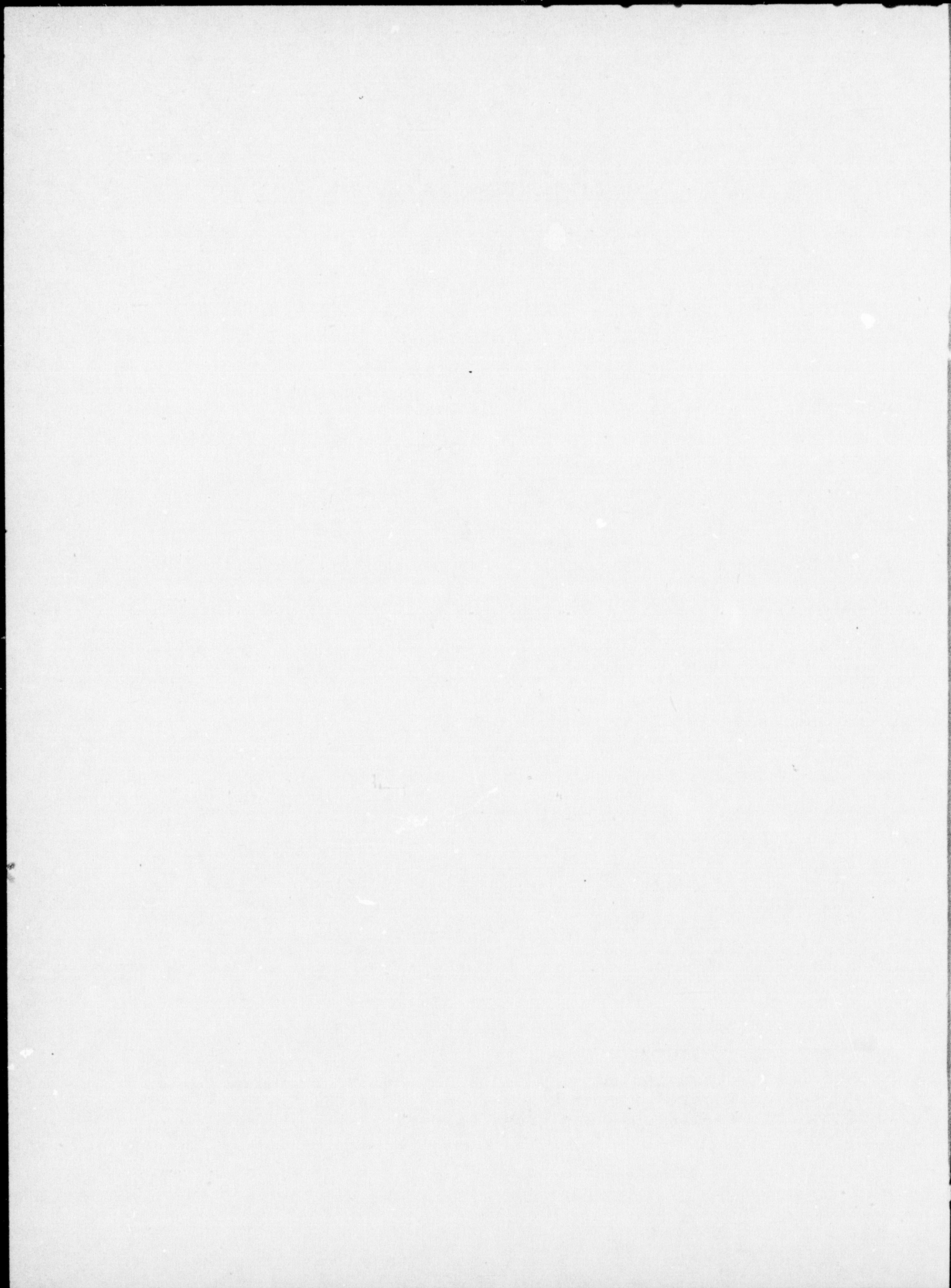
Dow Income

Capital Gains	\$147,950.00
Dividends	<u>562,628.00</u>
Total	\$710,578.00

Gross Income from Return

Capital Gains	\$148,126.00
Dividends	606,045.00
Interest	<u>6,384.00</u>
Total	\$760,550.00

*Schedule does not include any income items not required to be reported on federal income tax return. Capital losses were not considered in computing gross income.



A125

A126

Defendant's Exhibit EE.

"Partial Schedule of Income for Macauley Whiting (from joint federal income tax return)," 1971-1973 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is bound in on the opposite page)

Partial Schedule of Income for Macauley Whiting*
(from Joint Federal Income Tax Return)

1973

Salary	\$ 93,481.00
Directors' Fees	2,125.00
Dividends	21,749.00
Interest	66.00
Net Long Term Capital Gains	<u>2,073.00</u>
Total	\$ 119,494.00

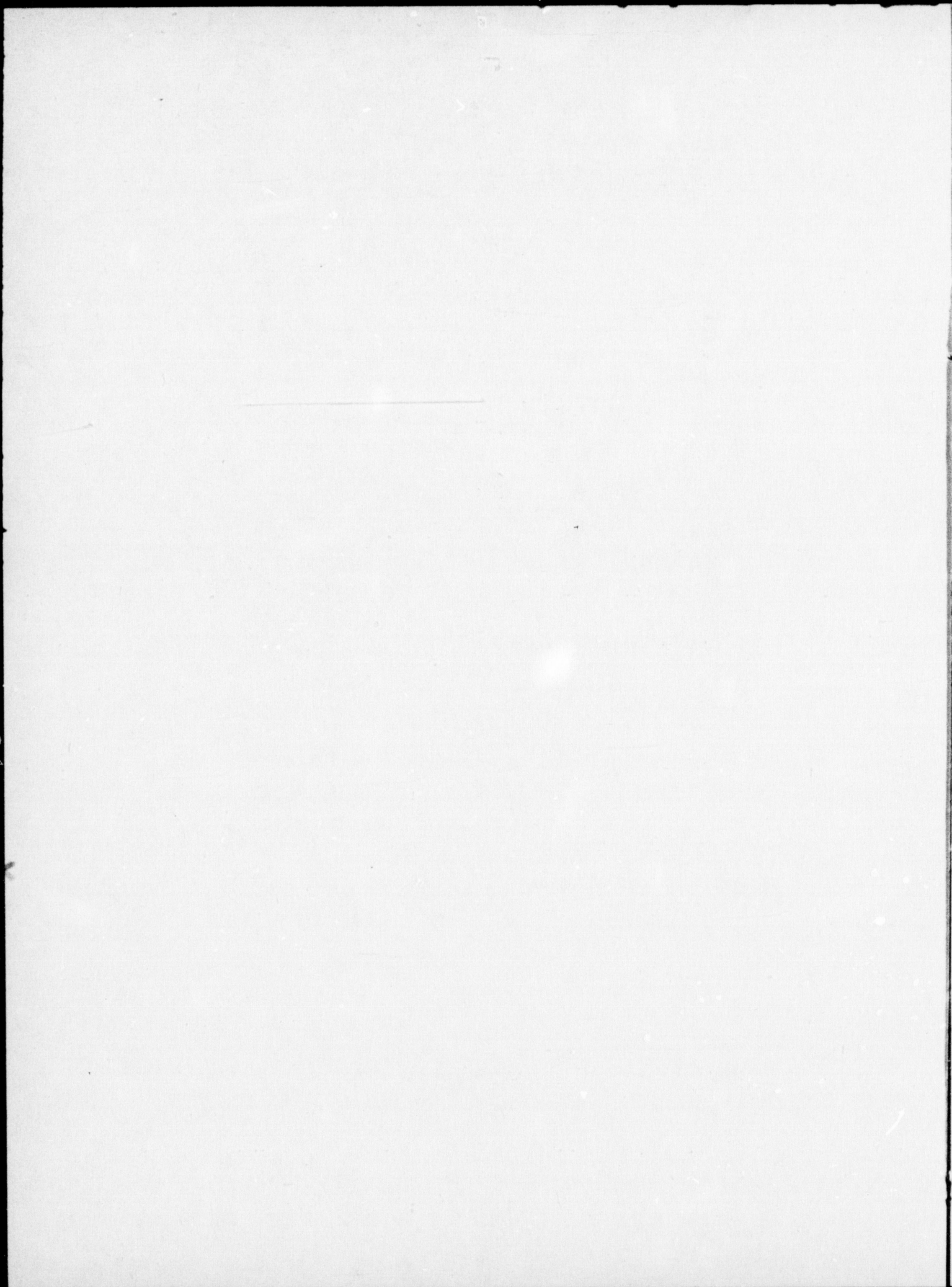
1972

Salary	\$ 91,167.00
Directors' Fees	2,525.00
Dividends	20,704.00
Interest	81.00
Net Long Term Capital Gains	<u>6,536.00</u>
Total	\$ 121,013.00

1971

Salary	\$ 77,964.00
Directors' Fees	2,675.00
Dividends	20,038.00
Interest	
Net Long Term Capital Gains	<u></u>
Total	\$ 100,677.00

*Schedule does not include any income items not
required to be reported on federal income tax
return.



A127

A128

Defendant's Exhibit FF.

"Schedule of Gifts Reported by Helen Dow Whiting
(January 1, 1971 to December 31, 1973)" (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

Date of
Return

4-8-71

4-8-71

4-8-71

Dec. 197

Sept. 197

Dec. 1973

* In order
plaintiff
by him a
tax retu

Schedule of Gifts Reported by Helen Dow Whiting*
(January 1, 1971 to December 31, 1973)

<u>Date of Gift</u>	<u>Type of Gift</u>	<u>Value</u>	<u>Donee</u>
1-21-71	77 shares Dow Common Stock	\$5,957.88	Macauley Whiting
1-21-71	77 shares Dow Common Stock	\$5,957.88	Henry Whiting, II
1-21-71	77 shares Dow Common Stock	\$5,957.88	Macauley Whiting, Jr.
2 12-6-72	59 shares Dow Common Stock	\$5,992.19	Macauley Whiting
12-6-72	59 shares Dow Common Stock	\$5,992.19	Henry Whiting, II
12-6-72	59 shares Dow Common Stock	\$5,992.19	Macauley Whiting, Jr.
12-6-72	275 shares Dow Common Stock	\$27,929.69	Midland Hospital Building Fund
12-6-72	492 shares Dow Common Stock	\$49,968.75	City of Midland
12-6-72	1,400 shares Dow Common Stock	\$142,187.50	Macauley and Helen Dow Whiting Foundation
73 7-6-73	120 shares Dow Common Stock	\$5,940.00	Macauley Whiting
7-6-73	120 shares Dow Common Stock	\$5,940.00	Henry Whiting, II
7-6-73	120 shares Dow Common Stock	\$5,940.00	Macauley Whiting, Jr.
7-6-73	566 shares Dow Common Stock	\$28,017.00	Midland Hospital Building Fund
7-6-73	1,010 shares Dow Common Stock	\$49,995.00	City of Midland
11-73	Furniture, other personal property	\$12,860.00	Northwood Institute
12-27-73	9,534 shares Dow Common Stock	\$551,184.00	Macauley and Helen Dow Whiting Foundation

to permit Mrs. Whiting to obtain the benefit of the marital exclusion provided by the federal gift tax laws, of Macauley Whiting consented to have each of the gifts listed above considered as having been made one-half and Mrs. Whiting. Accordingly, for each quarter listed above, Mr. Whiting filed the required federal gift return, although he made no gift of his own property which was required to be listed on his return.

A129



A130

Defendant's Exhibit GG.

Letter [from Joseph Freedman] to Helen Dow Whiting,
dated 2/8/72 (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

February 8, 1972

Mrs. Helen D. Whiting
2203 Eastman Road
Midland, Michigan 48640

Dear Helen:

I am enclosing a duplicate deposit slip covering the check for the \$100,000 which I received from you recently and which was deposited in your account on February 7.

You probably have already received the confirmation from the National Bank of Detroit showing the purchase of \$100,000 par U. S. Treasury Bills due 5/11/72 on a 3.141% discount basis. As soon as your April tax liabilities are definitely known, and as soon as Mac requires cash for the Sunoco Exploration deal, some of the Treasury Bills can be disposed of and we should have a clear picture as to what we can do with the funds that are available.

With kindest regards to Mac and yourself, I am

Sincerely yours,

JF/bt
Enclosure



A131

A132

Defendant's Exhibit HH.

Letter [from Joseph Freedman] to Helen Dow Whiting,
dated 7/12/71 (with handwritten attachment) (2 pp.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

July 12, 1971

Mrs. Helen D. Whiting
2203 Eastman Road
Midland, Michigan 48640

Dear Helen:

I am enclosing a duplicate deposit slip covering the check for \$40,000 which I received from you today.

I am looking into the Conoco Exploration, Ltd. project, and shall be in touch with you shortly.

With kindest regards to Mac and yourself, I am

Sincerely yours,

JF:kf
Enclosure

7/14/71 - After talking with Bill G. [unclear]
at Morgan Stanley, I called Mr.
Whiting and discussed Conoco deal.
Mac decided he wanted to go
along with the deal to the extent
of \$40,000 now.

2,000 from 12/3/71 to 12/15/71 \$ 143,627.16
 Cost 17,056.87
 Gain 126,570.27
 Tax Rate 32.5% 41,135.34
 25% of \$ 17,757.67 = 4,439.41
 32.5% of 108,612.67 = 35,299.12
37,732.53

2,500 in 1971 \$ 179,933.75
 Cost 21,321.02
 Gain 158,612.67
 Tax Rate 32.5% 51,549.18

25% of \$ 12,500.00 = \$ 3,125.00
 32.5% of \$ 108,612.67 = 35,299.12
47,799.12

SALES of DOW

4856 sh. of 12/1/71
 -1500 sh.
 3350 sh. of 12/1/71
 (ending 1500 sh. in 1971)
 .500 sh. 12/15/71
2850

A133

A134

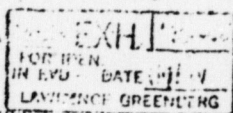
Defendant's Exhibit II.

Letter from Macauley Whiting to Bill Cotter,
dated 9/1/— (2 pp.).

(Photoprints)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

FROM: J. Dudley Whitney



Sept. 11

Bill Carter -

Attached is a hastily assembled summary of the common stock holdings of Helen and myself.

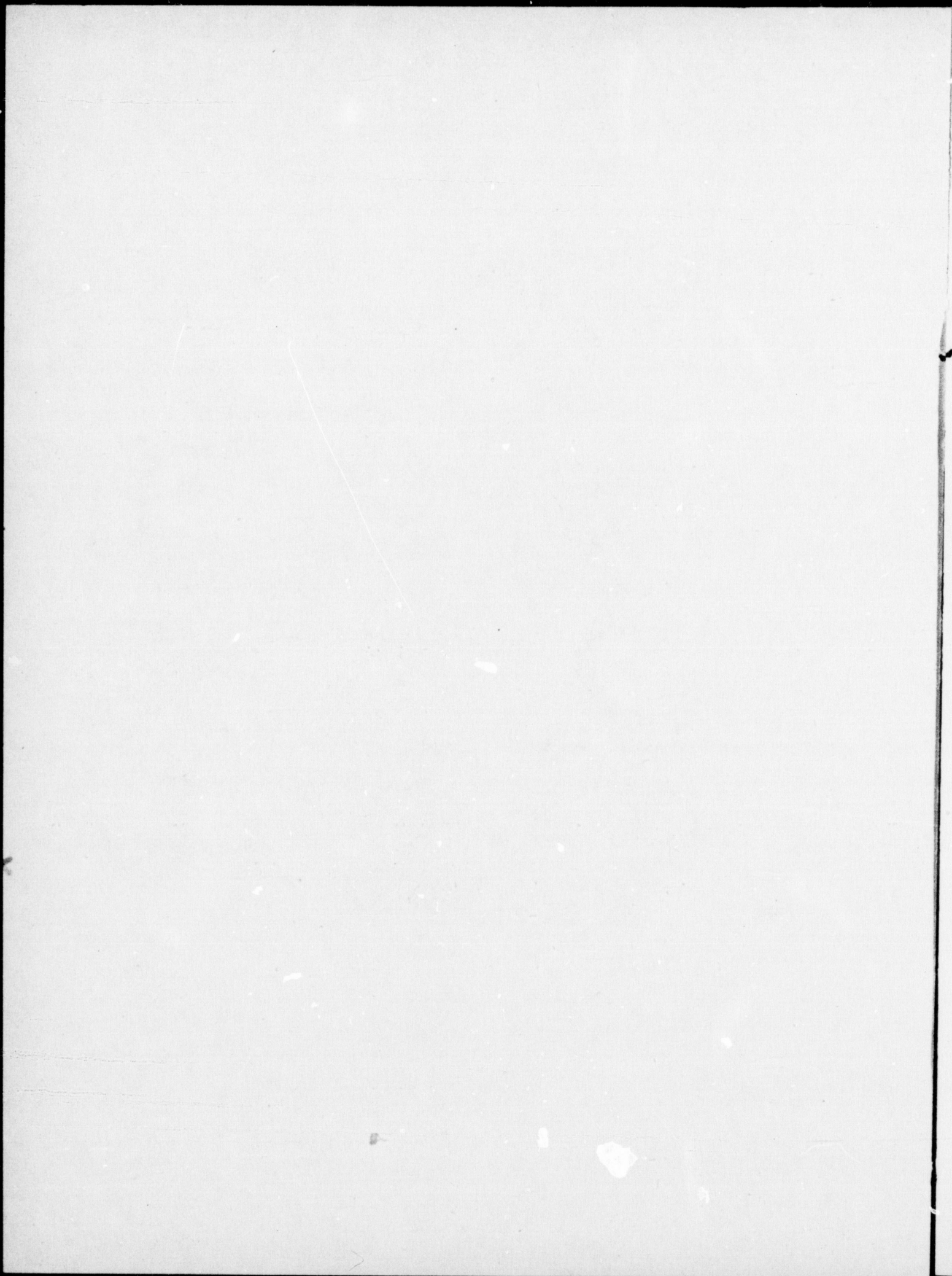
In addition Helen has a good number of tax-exempt bonds, which we can describe to you later.

I have underlined the stocks which I believe we should put in your custody.

Our children and their trusts hold some securities which we will list later, also.

We look forward to seeing you Sept. 29.

Mac



A135

Defendant's Exhibit JJ.

Excerpt from continued deposition of Macauley Whiting,
taken by defendant on 8/8/74:

(148) Q. And have you ever had any discussions with Freedman or Rickabaugh to assure that the timing of any of the sales of stock in Mrs. Whiting's name would not be within a six-month period of any transactions, any other transactions for her account or for your account? A. Yes.

Q. So, you've depended upon your investment counselors to try to time the sales of Mrs. Whiting's stock, so as not to run afoul of any insider restrictions. A. Yes.

Q. Let's get to the substance.

What did you and Mr. Freedman talk about first of all, regarding timing of purchases or sales on behalf of yourself or Mrs. Whiting in Dow securities? A. With Mr. Freedman, my recollection is that we talked solely from a planning standpoint because I don't recall any instance of acquiring stock then which would make this six months before and after limitation work.

• • • • •

Defendant's Exhibit LL.

Excerpts from Deposition of Mark V. Rickabaugh taken by defendant on 9/4/74:

(23) Q. There is a notation "Will sell two percent of Dow estate each year. Must be done before November 1."

From what source did that notation come? A. I don't recall where the two percent came from. Before November was communicated to me by Macauley Whiting in that the firm, Dow Chemical, had requested at that time, I can't recall the reasons, that sales by control persons be made before November.

Q. The notation reflects two percent of Dow estate each year. What was your understanding of the term "Dow estate"? A. My understanding was that that would be two percent of Mrs. Whiting's stock of Dow Chemical Corporation.

Q. Your understanding from Mr. Whiting was that the sale should be made before November 1 each year? A. Well, no, not each year, but in the year 1972, I believe, is what we are talking about.

* * * * *

(24) Q. Mr. Rickabaugh, tell me the substance of what Mr. Whiting communicated to you regarding some Dow Chemical policy at this time? A. Well, certainly by the time that note was made, we had determined discussions, that Dow Chemical stock would be sold in the year 1972.

Mrs. Whiting's chemical stock would be sold in the year 1972. The only thing that I recall was that Macauley Whiting had mentioned that Dow Chemical would prefer that sales of Mrs. Whiting's stock take place before November 1972. And that we would try to honor that situation.

* * * * *

(52) Q. Did either Mr. Doyle or Mr. Toscano or anyone else at Smith, Barney give you any reason or any basis for the decision that Forms 144 should be filed for Mrs. Whiting? A. Well, I am very unclear as to exactly what discussions took place between all of us at that time. (53) All I

Defendant's Exhibit LL.

remember was that there was uncertainty whether in our mind whether she was or was not. And to clear that up, we felt the only thing to do was to file the 144.

Q. Uncertainty as to whether she was or wasn't what?

A. A control person.

Q. I take it then that as you understood it, whatever the discussion and the reasons were, Smith, Barney thereafter operated on the assumption she was a control person? A. Yes, and we also bought back the stock we sold, and then proceeded to file 144 Form for her.

Q. The reason for buying back the stock was to assure that Smith, Barney would comply fully with all applicable rules and laws? A. Yes, and Mrs. Whiting would also comply with the rules.

.

(73) Q. Is it not true at some point in late 1973 over half a million dollars were transferred from the account to a bank in Michigan? A. Well, I can't remember the exact sum—

Q. Chicago, not Michigan? A. There was a large check that was taken from the account.

Q. Is it not true that a substantial amount of the proceeds of such transfer came from the sale in 1973 of her account of Dow stock? A. Well, that's how most of the cash got into the account, that would be true.

.

(82) Q. Paragraph 3 of the July 11, 1974 memo relates to—states in part “Macauley Whiting must assume that a window exists for the sale of Dow. The company, Dow, will make these windows available at different times during the year.”

Was this a new procedure that was being instituted in your servicing of the account in July 1974? A. Yes. It was additional restriction in my filing on the sale of Mrs. Whiting's stock, again, that I wanted to have on the record.

.

Defendant's Exhibit LL.

(83) Q. At least as of July 11, 1974, when the memo was executed, it was your determination that such a restriction would apply to sales of Mrs. Whiting's stock?

(84) A. Yes.

Q. Did you have any reason or any basis for applying the restriction to sales of Mrs. Whiting's stock as opposed to Mr. Whiting's stock? A. I was carrying through the logic of the control person that we had to make a 144 ruling for her sale, she would also likely fall under any restrictions for control persons.

Q. So at least so far as you understood it, you were treating Mrs. Whiting as a control person in that regard? A. That is correct.

* * * * *

(107) Q. Did the general discussion with Mr. Whiting concern the 144 filings and otherwise encompass the fact that you and Smith, Barney considered Mrs. Whiting a control person of Dow? A. Yes, I believe so.

Q. Did you tell Mr. Whiting any basis or any reasons why you and Smith, Barney took the position that Mrs. Whiting was a control person at Dow? A. Yes.

Q. What did you tell Mr. Whiting in substance in that regard? A. Well, I told him in that regard that in our file—he was a control person by the fact he was a director of Dow Chemical Corporation and we took the view that his wife was also a control person because of that fact.

Q. Because he was a director and she was married to him? A. Yes.

Q. You told him this in 1972? A. Yes.

(108) Q. Did he object to that when you told him that? A. Well, I think we had a lot of discussion. I don't know whether "object" is the right word. But I think it was a surprising revolution.

Q. But he acquiesced in it in connection with your administering his and her accounts at Smith, Barney? A. Yes.

* * * * *

A140

Defendant's Exhibit MM-31.

Letter from "Helen" [Dow Whiting] to "Joe"
[Freedman] marked "rec'd 11/18/72" (1 p.).

(Photoprint)

(For convenience of Court and Counsel this Exhibit is
bound in on the opposite page)

JOE -

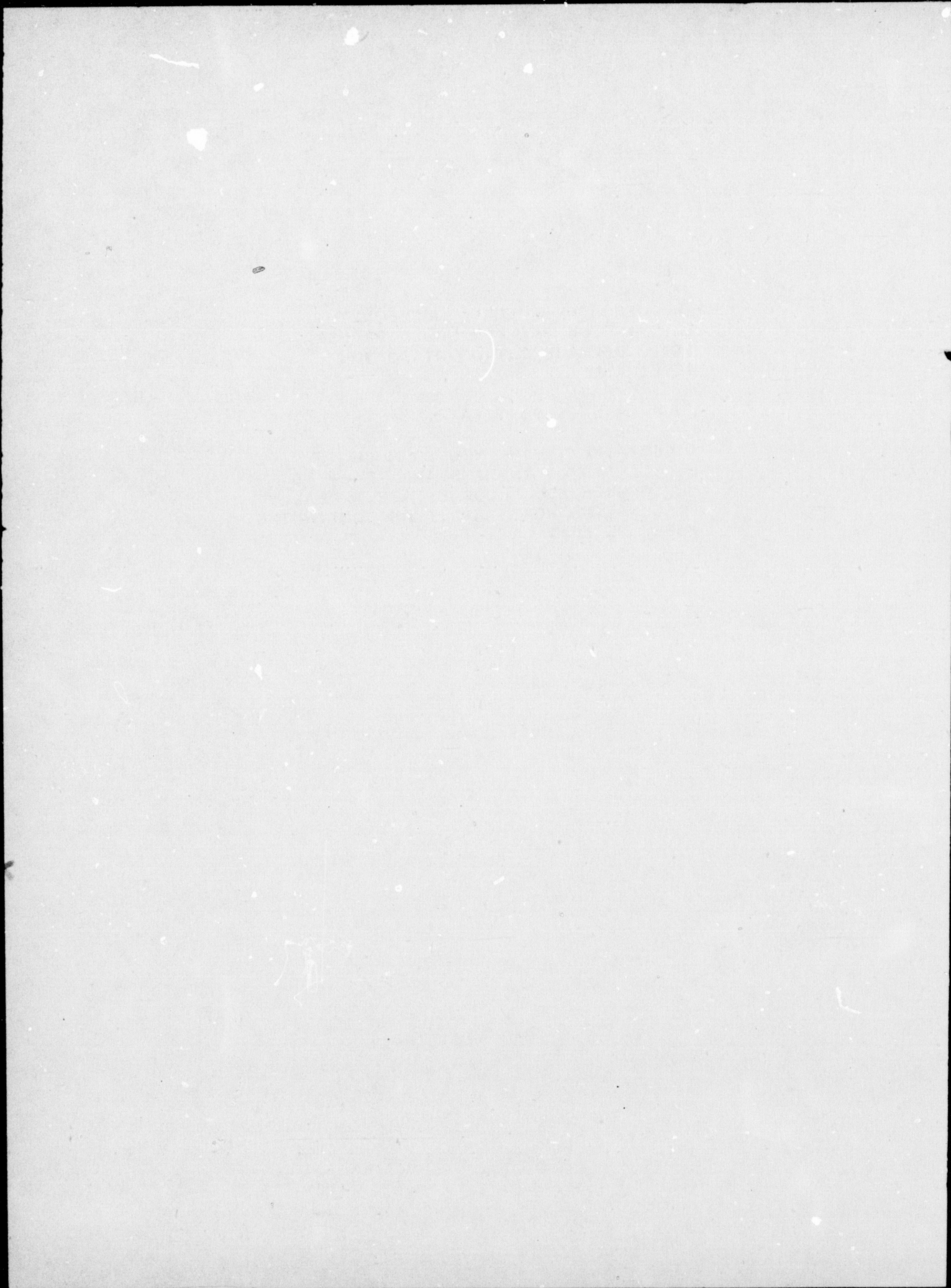
ENCLOSED OUR CHECK - HOPEFULLY
THIS IS THE WAY YOU WOULD PREFER
IT TO BE MADE OUT - NOT TO YOU
PERSONALLY.

YOUR RATE IS MOST FAIR.

I CERTAINLY THANK YOU SO MUCH
FOR TAKING US IN HAND AND TEACHING
ME SO MUCH ABOUT OUR ESTATE. REALLY
FASCINATING WORK, AND I AM CONTINUING
WHERE WE LEFT OFF.

SINCERELY,

Whe -



A141

Defendant's Exhibit NN.

Deposition of Helen Dow Whiting, taken by
defendant on 8/9/74:

(36) Q. Mrs. Whiting, when you first told Mr. Rickabaugh to sell a portion of your Dow stock, how did you determine what amount of stock you wanted to sell in late 1972? A. I honestly can't remember.

* * * * *

(37) Q. Mrs. Whiting, I show you a copy of Smith, Barney's records on your account for the period ending September 29, 1972 which reflects that you delivered to Smith, Barney on September 12, 1972, 1,850 shares of Dow Chemical stock.

Does that refresh your recollection as to the amount of Dow stock that you delivered to Smith, Barney and requested Mr. Rickabaugh to sell for you? (38) A. No.

Q. Mrs. Whiting, is it your testimony that even looking at the Smith, Barney record, that you cannot recall the approximate amount of Dow stock that you delivered to Smith, Barney to be sold in September 1972? A. Yes.

Q. Having available the Smith, Barney records that show that they received 1,850 shares from you in September, can you state within 5,000 shares you delivered to Smith, Barney and instructed them to sell for you? A. No, I cannot.

Q. Can you state within 100,000 shares how many shares you delivered to Smith, Barney? A. No, I cannot.

Q. Are there any reasons that you could state in the record why you are unable to recall such basic events in your financial affairs? A. Yes.

Q. Would you state them in the record, please. A. I never remember figures.

Q. You don't even remember ball park figures in terms of amounts of shares or numbers? A. No.

Defendant's Exhibit NN.

Q. Is this lack of ability to remember figures (39) characteristic solely of your memory with regard to your financial affairs and your Dow holdings? A. I don't know how to answer that.

Q. Well, I mean, let's say, do you remember how old you are? A. Yes.

Q. Do you remember the year you were born? A. Yes.

Q. Do you remember the ages of your children? A. Yes.

Q. Did you take arithmetic in grammar school? A. Yes.

Q. Do you have any idea, today, of the approximate number of Dow Chemical shares you own? A. No.

Q. Do you have any idea today of the approximate value, market value, of your Dow Chemical holdings? A. No.

* * * * *

(150) Q. Mrs. Whiting, from 1945 through December 31, 1973, had you taken any acts to preclude your husband from benefiting from the income or capital gains that you derive from Dow Chemical stock in your name? A. What did you mean "acts"?

(151) Q. Have you done anything? Have you set up any procedures? Have you—can you think of anything that you affirmatively did so as to preclude your husband from benefiting from the income or capital gains on your Dow stock? A. No acts.

* * * * *

Q. Have you done anything, taken any acts to set aside the management investment, reinvestment, of your Dow Chemical securities apart from the financial affairs and securities transactions of your immediate (152) family? A. I have always considered mine to be separate from the rest of the family.

Q. I am not asking for your statement of mind or what you considered.

Defendant's Exhibit NN.

What I am asking for, did you do anything? A. No.

Q. And it's true, is it not, that from 1945 until a few years ago all of your Dow securities were maintained along with your husband's and your children's and the Foundation securities in a vault at the Dow Chemical Company?

A. Yes.

Q. And all during that time period, your husband was an employee of Dow Chemical and from sometime in 1950 a director of Dow Chemical? A. Correct.

* * * * *

(153) Q. Now, at some point for whatever reason, your Dow securities along with your husband's, your children's, your children's trusts and the Foundation, were transferred from the Dow vault to a safe deposit bank to a bank in Midland? A. Yes, that's correct.

Q. And the box was in your name? A. Yes, that's correct.

Q. And your husband had authorization to enter that safe deposit box? A. Yes, of course he did.

(154) Q. Now, at sometime between 1945 and 1973, you received accounting and perhaps tax or investment or related advice and services from the national accounting firm, Haskins & Sells? A. That's true.

Q. And your husband did also? A. I guess so.

Q. And at sometime, you switched from Haskins & Sells to Arthur Andersen, Mr. Scholler? A. Yes, that's true.

Q. When Arthur Andersen performed accounting and other services for you, they also performed accounting and other services for your husband? Is that correct? A. For my husband, my children, the trust and the Foundation.

Q. Then in 1972, both you and your husband and your children and the trust switched and received such tax, accounting and investment related advice from the Goldstein, Golub, Kessler firm? A. Correct.

Q. And at times during the 1940's, '50's and '60's, you

Defendant's Exhibit NN.

received investment counselling advice from Mr. Freedman? A. Not in the '40's. Late '50's and '60's, (155) end in the early '70's.

Q. And your husband received investment counselling advice from Mr. Freedman during the same time period? A. You would have to ask him.

Q. Well, indeed he attended meetings with Mr. Freedman in person with you; did he not? A. Yes.

Q. And then in September, or somewhere close to October 1, 1972, both you and your husband switched from Mr. Freedman and set up a discretionary accounts at Smith, Barney & Company in New York? A. Two separate accounts, yes.

Q. Yes.

And Mark Rickabaugh serviced both those accounts? A. Yes.

Q. Mr. Channin, who I believe had been one of the family lawyers, rendered tax, legal and other advice to both you and Mr. Whiting? A. And to the Foundation—

Q. And to the children? A. Yes.

Q. And indeed in this lawsuit in which your (156) husband is named plaintiff, and you are not a party, both you and your husband are represented by Dewey, Ballantine? A. Correct.

Q. And indeed, the same lawyer, Mr. Channin, drew up your will and your husband's will? A. Yes, and the Foundation. Yes. And the trust.

Q. And since Mr. Channin is deceased now? A. Yes.

Q. And at present, both you and your husband have retained Sullivan & Cromwell to review both of your wills and to render other Estate planning advice, I take it? A. Yes.

Q. You and your husband entered into no ante-nuptial contracts or agreements which—you have never had an ante-nuptial agreement? A. No.

Defendant's Exhibit NN.

Q. You have never had a post-nuptial agreement? A. I didn't know you could have both.

Q. Depends on the agreement? A. Yes, I guess it must.

Q. Your husband is and has been over the years (157) a substantial beneficiary under your will entitled to receive substantial interests in your Dow holdings were you to die? A. My husband and my children. But I have to die first.

* * * * *

Q. And you have no established policy that you adhere to with regard to segregation of expenses which you pay from your Dow income, dividends or capital gains, do you? A. I pay the expenses of the things that I manage. I manage the home and the help and I pay the expenses that I am competent, too, you know.

Q. But you don't try to keep new records to see precisely whatever you pay a check in payment of some expenses, to see how many of the dollars are coming from your Dow securities? A. No, I couldn't possibly tell that.

* * * * *

(159) And since the date of your marriage, is it not true that you have never retained any type of accountant, investment counsellor or professional adviser away from your husband and children and the rest of the family solely to managing or advising you and you alone as to your Dow securities? A. That's correct.

* * * * *

A147

Opinion of Ward, D.J.

(Copy)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[S A M E T I T L E]

APPEARANCES:

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WARD, J.

Plaintiff Macauley Whiting brings this action pursuant to Section 16(b) of the Securities Exchange Act of 1934 ("§ 16(b)" of "the Exchange Act"), 15 U.S.C. § 78p(b), and 28 U.S.C. § 2201, seeking a declaratory judgment that he is not liable to defendant Dow Chemical Company ("Dow") for profits allegedly realized upon certain sales and purchases of Dow stock in September, November and December of 1973. Dow counterclaims for \$208,203.80 plus interest, the amount which it contends is recoverable by the

Opinion of Ward, D.J.

company according to the applicable rules of law, should this Court find plaintiff liable under § 16(b). The Court has jurisdiction and venue is proper in this district. 15 U.S.C. § 78aa.¹

Mr. Whiting has been a director of Dow since 1959. His wife, Helen Dow Whiting, a granddaughter of the founder of Dow, has owned Dow common stock since childhood and substantial quantities of that stock (although less than 10% of the outstanding shares of the company) since 1962. The common stock of Dow is an equity security registered and traded on the New York Stock Exchange, Inc., and is not an exempted security within the meaning of 15 U.S.C. § 78c(a)(12). The present controversy arises out of Mrs. Whiting's sale of 29,770 shares of common stock of Dow during September and November, 1973 at various prices totalling \$1,645,063.58, and Mr. Whiting's exercise, on December 27, 1973, of an option granted to him by Dow to purchase 21,420 shares of its common stock at an aggregate option price of \$520,774.² The question now before the Court is whether Mr. Whiting thereby "realized profit . . . from any purchase and sale, or sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months . . ." within the meaning of § 16(b) of the Exchange Act. The parties base their arguments in large part upon the premise that that question in turn rests upon whether Mr. Whiting is the "beneficial owner" of the shares held by his wife.

Defendant vigorously contends that the purposes of § 16(b) can be effectuated only if it is held to apply to the situation now before the Court; plaintiff equally vigorously argues that the holdings and the transactions of husband and wife in this case are separate and cannot be matched against each other for purposes of § 16(b) liability. Both Mr. and Mrs. Whiting testified at the trial.

Plaintiff demonstrated that his wife has assets many times greater than his own, and from them pays by far the

Opinion of Ward, D.J.

largest share of the family expenses. She maintains her own personal records, her own checking and brokerage accounts, and does not mingle her assets with his. While the largest part of her personal estate consists of her Dow common stock, Mr. Whiting does not communicate with his wife concerning the affairs of the company. Mrs. Whiting controls all specific transactions involving her assets, to the extent that she has placed them in a discretionary account with Smith, Barney & Co., Inc., to whom she has given general instructions and some of whose specific purchases she authorizes. She does not, as a matter of practice, discuss individual transactions with her husband, and there is no evidence that he controls her decisions concerning even the general aspects of her management of her estate. It is clear that Mrs. Whiting autonomously manages her own separate estate and is not the "alter ego" of her insider husband.

It is also clear, however, that the Whitings enjoy the mutual affection, respect and communication which one would expect of a happily married couple, and that together they and their children benefit, in terms of style of life, from Mrs. Whiting's substantial wealth. They share a common home, own a vacation home which they use together, and Mr. Whiting does contribute virtually his entire salary to defray the family expenses which are met primarily by Mrs. Whiting.

Mr. Whiting serves as trustee of several trusts in their children's names, which consist largely of gifts of Dow common stock from Mrs. Whiting. She commonly takes advantage of his annual gift tax exclusion to make gifts to their children's trusts, as well as to charitable organizations. They file a joint income tax return which maximizes the deductions available to both. They use the same financial advisers although their accounts are formally separate, and they are frequently, although not invariably, present together at meetings with those advisers

Opinion of Ward, D.J.

to discuss the overall management of their respective estates and the estates of their children. Mrs. Whiting pays the fees of these advisers. Together the Whitings have discussed the general philosophy which should govern the management of Mrs. Whiting's estate, and in early 1972 agreed upon a major shift in that philosophy. Since that time she has disposed of certain percentages of her Dow stock annually, reinvesting the proceeds elsewhere in the interest of diversifying her holdings and obtaining maximum tax benefits. Upon occasion Mrs. Whiting consults her husband concerning the desirability of certain investments in areas of his expertise, and although she does not invariably follow his advice she appears to have considerable respect for his opinion. In short, the resources of both husband and wife are significantly directed toward their common prosperity, and they easily communicate concerning matters which relate to that prosperity.

Discussion

Congress enacted both § 16(a) and § 16(b) of the Exchange Act (15 U.S.C. § 78p)³ for the purpose of preventing speculation based upon inside information or other abuses of their position by directors, officers, and large shareholders of registered corporations. Section 16(a) subjects all holdings and transactions by such persons to the closest scrutiny, in order that detailed exposure itself will discourage abuses. 2 Loss, Securities Regulation 1038 (1961). Section 16(b) focuses more directly on the evil of abuse of inside information for short-swing speculation in the securities of the insiders' corporations, and somewhat arbitrarily requires insiders of a listed corporation to disgorge to the corporation any profit realized upon purchases and sales of its securities within six months.⁴

Opinion of Ward, D.J.

The words, "beneficial owner," are used in § 16(a) and § 16(b) for two different purposes. First, "insider" status may derive from beneficial ownership of more than ten percent of the equity securities of an issuer of registered securities. Insider status carries with it both an obligation to report holdings and transactions to the Securities and Exchange Commission ("the Commission"), under § 16(a), and possible liability for profits under § 16(b). Second, § 16(a) imposes upon officers and directors of an issuer of registered securities, in addition to ten percent beneficial owners, the obligation to report to the Commission the amount of securities of that issuer of which they are the beneficial owner, as well as any changes in that ownership. Thus the words "beneficial owner" at once define one category of persons who are subject to both sections 16(a) and 16(b), and determine which holdings all insiders must report, under § 16(a).

The reporting requirements of § 16(a) are broader in scope than the liability provisions of § 16(b); changes in beneficial ownership within a six-month period, such as transfer of shares whether by gift or for consideration to a spouse or other family member, although duly reported may not always give rise to liability. 2 Loss, Securities Regulation, 1082-3, nn. 197-199 (1961); 5 Loss, Securities Regulation 3066 (1969); Feldman & Teberg, Beneficial Ownership Under § 16 of the Securities Exchange Act of 1934, 17 W. Res. L. Rev. 1054, 1063 (1966). The Commission has supported broad interpretations of the reporting requirements, reasoning that Congress intended the trading activities of insiders to be subject to the most careful scrutiny, for its deterrent effect not only upon abuse of inside information for short-swing profit, but also upon other abuses to which other sections of the statute are more specifically directed. See Feldman & Teberg, *supra* at 1063.

Opinion of Ward, D.J.

The question under § 16(b) is more narrowly whether the insider has "realized profit" by "any purchase and sale," terms not completely defined in the statute, but interpreted by the courts and the Commission in light of the purposes of that section. In interpreting the language of § 16(b), the courts have kept in mind that § 16(b) was designed to be largely automatic in application,⁵ and to "squeeze all possible profits" from short-swing trades by insiders, *Smolowe v. Delendo Corp.*, 136 F.2d 231 (2d Cir. 1943), *cert. denied*, 320 U.S. 751 (1943), and have strictly construed the language in favor of the corporation's recovery of maximum amounts. They have also, on occasion, mitigated the harsh effects of the rule by examining whether a transaction or individual class of transactions lends itself specifically to the abuses the section is designed to prevent, *e.g.*, *Kern County Land Co. v. Occidental Corp.*, 411 U.S. 582 (1973); *Reliance Electric Co. v. Emerson Electric Co.*, 404 U.S. 418 (1972); *Blau v. Lehman*, 368 U.S. 403 (1962), and if it does not, have strictly construed the language in favor of the insider. There has thus emerged a tension between not always compatible guides, reflected in dissenting opinions to significant cases as they are decided.

In *Blau v. Lehman*, *supra*, for example, the Supreme Court held a partner liable for only his pro rata share of profits realized upon his partnership's purchase and sale within six months of shares in a corporation of which he was a director. The partnership had acted independently of any specific advice from him, without his specific knowledge, and he disclaimed any interest in any proceeds of the transactions. The Court refused to hold that the partnership as a whole was an insider, or to accept the harsh effect of holding the director liable for the full amount of profit realized by the partnership, since the language of § 16(b) speaks specifically to "profit realized

Opinion of Ward, D.J.

by him" referring solely to the insider. In a vigorous dissent Justice Douglas urged that the partnership as a whole be considered a person, an insider because one of its members was an insider. He discussed the large potential for abuse of inside information in the partnership context, emphasizing the automatic and arbitrary character of the section and the Court's consistent prior policy of rigorously squeezing all profit from transactions by insiders in a six-month period. 368 U.S. at 414 *et seq.*

Again, in *Reliance Electric Co. v. Emerson Electric Co.*, *supra*, the court looked to the strict language of § 16(b), and in the context of a defeated tender offer permitted a ten percent beneficial owner deliberately to dispose of shares acquired within six months in two stages, only one of which would be subject to § 16(b) liability. The majority reasoned that Congress has created a strict and arbitrary rule of liability which should not be extended beyond the literal meaning of the section's language. Justice Douglas' dissent emphasized the prophylactic purpose of § 16(b), and again urged a flexible construction of the statute which would serve that purpose. 404 U.S. at 427 *et seq.*

And most recently, in *Kern County Land Co. v. Occidental Corp.*, *supra*, the Supreme Court held that in the context of a defeated tender offer, a binding option agreement to sell the shares acquired during the campaign, negotiated within six months of purchase, but effective only beyond that time, was not a "sale" for purposes of § 16(b) liability. The court considered the transaction not susceptible of the kind of abuse toward which § 16(b) is directed. Once more, Justice Douglas argued for a strict and automatic application of the statute, a "bright-line test," even should that include some who were not in a position to abuse inside information. 411 U.S. at 605 *et seq.*

This Court is now asked to interpret the language of § 16(b), "profit realized by him upon any purchase and

Opinion of Ward, D.J.

sale or sale and purchase," to impose liability where an insider purchases and his spouse sells shares of his company, if he "beneficially owns" her stock for purposes of § 16(a) reports. The Court concludes that the language of § 16(b) should be interpreted to impose liability, and in so doing, applies the guideline expressed by the majority in *Kern*:

In deciding whether borderline transactions are within the reach of the statute, the courts have come to inquire whether the transaction may serve as a vehicle for the evil which Congress sought to prevent—the realization of short-swing profits based upon access to inside information—thereby endeavoring to implement congressional objectives without extending the reach of the statute beyond its intended limits. *Kern County Land Co. v. Occidental Corp.*, *supra* at 594-5.

In the context of § 16(a), the Commission has evolved a dual test of an insider's beneficial ownership of his or her spouse's shares. See 2 Loss, Securities Regulation 1101 (1961); 5 Loss, Securities Regulation 3063-66 (1969). Such beneficial ownership may derive from the insider's "power to revent" in himself title to those shares.⁶ Or it may result from his enjoyment of "benefits substantially equivalent to those of ownership." In a release dated January 19, 1966, the Commission described such benefits. Sec. Ex. Act Rel. 7793. They include use of the spouse's income or profits for the maintenance of a common home or to meet expenses which would otherwise be met from other sources, and the ability to exercise a controlling influence over the purchase, sale or voting of those securities. The Commission specifically required, as a matter of course, the reporting of securities held by any relative of an insider who shares a common home with him, in effect creating in such a situation a presumption of beneficial ownership for reporting purposes. The report may, however, be accompanied by a dis-

Opinion of Ward, D.J.

claimer of beneficial ownership, so that an insider may always in a particular case show that despite this living arrangement he does not receive "benefits substantially equivalent to those of ownership" from the relative's shares.' Moreover, the Commission later stated that the report alone does not constitute an admission of beneficial ownership for purposes of § 16(b) liability, but said that the question of "profits realized upon the purchase and sale . . ." will always be decided on the particular facts of each case in the context of litigation. Sec. Ex. Act Rel. 7824, February 14, 1966.

Plaintiff argues that the Commission has thus established reporting requirements designed to reveal all transactions in which an insider may have any interest, but that § 16(b) liability may not be found except where the insider has in fact controlled the transactions so closely that the spouse is either his "alter ego" or agent. *Blau v. Lehman, supra*; *Reliance Electric Co. v. Emerson Electric Co., supra*; *Blau v. Mission Corp.*, 212 F.2d 77 (2d Cir. 1954), cert. denied, 347 U.S. 1016 (1954); *Alloys Unlimited, Inc. v. Gilbert*, 319 F. Supp. 617 (S.D.N.Y. 1970). He refers to the broader scope of § 16(a), and the manner in which the courts have literally interpreted certain language in § 16(b) to limit liability except where it was clearly imposed.

But as the court earlier observed, the language of § 16(b) has always been interpreted by reference to the purposes of that section and, while there is hesitation to *extend* the statute by judicial construction of clear language, where words, such as "purchase" or "sale," are open to several interpretations the courts will construe them to effectuate the purposes of § 16(b). Furthermore, §§ 16(a) and (b) are interrelated, as the courts have recognized. *Reliance Electric Co. v. Emerson Electric Co., supra*, 404 U.S. at 426; *Feder v. Martin Marietta Corp.*, 406 F.2d 260, 268 (2d Cir. 1969).

Opinion of Ward, D.J.

This Court considers the Commission's interpretation of "benefits substantially equivalent to those of ownership" useful in determining whether an insider realizes profits upon transactions in his spouse's shares of his company. Joint maintenance of a common home and the sharing of family expenses indicate initially so substantial a common interest that both profit where one obtains financial advantage. The ability to exercise a controlling influence over sales and purchases of the spouse's shares, particularly when combined with a substantial common interest in mutual prosperity, indicates that the family situation is susceptible to the abuses which § 16(b) was designed to prevent. Moreover, it indicates that, where necessary, the couple can time its transactions in the shares of the insider's corporation in accordance with the section's requirements.

The policies of § 16(b) would not be served were this Court to consider it applicable only to transactions in a spouse's shares when the spouse is the "alter ego" or agent of the insider. Increasingly, both parties in a marriage have independent means which they individually control; without in any way denying the autonomy of each the Court must recognize that the usual family unit shares the prosperity and the adversity of its members, and communicates concerning matters of common concern. The policies of automaticity and prophylaxis which underlie § 16(b) demand that the financial dealings of each spouse in the securities of a corporation of which one is an insider be attributable to the insider, where it is shown that the insider beneficially owns the spouse's stock for purposes of § 16(a) reports. To avoid liability the insider must demonstrate in some other way that the transactions, otherwise within the scope of § 16(b), generated no "profits realized by him."

Without analysis, several courts have reached the same conclusion. *Blau v. Potter* [1973 Transfer Binder], CCH

Opinion of Ward, D.J.

Fed. Sec. L. Rep. ¶ 94,115 at 94,117 (S.D.N.Y. 1973); *Bershad v. McDonough*, 428 F.2d 693 (7th Cir. 1970); *Marquette Cement Mfg. Co. v. Andreas*, 239 F. Supp. 962, 966-67 (S.D.N.Y. 1965); see also, *Rothenberg v. Sonnabend* ['61-'64 Transfer Binder], CCH Fed. Sec. L. Rep. ¶ 91,226 (S.D.N.Y. 1963). In another case the parties stipulated that the insider is liable for transactions made by the spouse. *B. T. Babbitt, Inc. v. Lachner*, 332 F.2d 255 (2d Cir. 1964). In both *Blau* and *Marquette* the Court proceeded to decide that no such beneficial ownership was proved. In *Marquette* the court noted that the parties were legally separated at the time of the transactions, and divorced at the time of the action; in *Blau* the court emphasized the completely separate nature of the wife's assets, which were not used in any way for the common living expenses or for the wife's own support, over which the husband exercised no influence, and which were totally segregated as a matter of accounting practice. In these situations the possibility of the sort of abuse to which § 16(b) is directed is minimal, and the separation of financial interests and responsibilities is so clear that a court could not justly find that the insider had "realized profit."

As noted above, however, in the present case the segregation of assets and contributions to the family welfare is not so complete. In many ways the Whitings' expenditures are linked, although their assets are kept separate. They do communicate concerning financial matters deemed mutually important, and in their tax returns and charitable contributions have demonstrated an ability to combine their actions where it is to their joint advantage.

Moreover, the record shows that both Mr. Whiting and Mrs. Whiting were generally aware of the specific transactions of the other which are the subject of this litigation. Mr. Whiting knew that his wife had increased the pace

Opinion of Ward, D.J.

of her disposition of Dow stock toward the latter part of 1973. She was aware that he possessed an option which he was required to exercise before it expired in June, 1974. She knew that he possessed insufficient funds to purchase the shares pursuant to his option and was considering obtaining a loan from the Harris Trust and Savings Bank ("the Harris Bank"), at which she had an account. Their accountants recommended, however, that his purchase be financed by a loan from her, since large sums of money generated by her disposition program for her Dow securities were available in her account for investment elsewhere. Although the Whitings initially rejected this suggestion they did ultimately arrange that Mrs. Whiting should lend Mr. Whiting the purchase price for the exercise of his option at an annual rate of interest of 7%, payable over an indefinite period of time. Mr. Whiting had commenced negotiations with the Harris Bank, which he discontinued, stating in a letter to the bank: "We have been able to get the cash required from sale of stock and will not need the loan at this time."

It is also clear that the Whitings were mindful of their general § 16(b) exposure. Mrs. Whiting knew that she was required to file reports with the Commission because her husband was a director of Dow; she knew that her transactions were in some ways restricted by that fact, and that in a sense she was herself an insider and should time her own purchases and sales accordingly. In fact, she did not herself purchase Dow stock. Mr. Whiting listed her shares on the reports which he filed with the Commission pursuant to § 16(a), and had received memoranda alerting him to his potential liability for her transactions. It appears that he exercised his option at the time he did under the erroneous impression that this was not a "purchase" for purposes of liability under § 16(b). The Court is convinced that had the Whitings known specifically that that trans-

Opinion of Ward, D.J.

action was subject to § 16(b) they would have timed either her sales or his purchase differently. But, as noted above, insiders are deemed capable of structuring their transactions in accordance with the strict and arbitrary requirements of that section, and are held to bear the risk of their own inadvertence. The Court's conclusion in this respect merely reinforces its judgment that this family situation is of the sort to which § 16(b) is fairly addressed. Accordingly, judgment is awarded in favor of defendant.

The foregoing constitutes the findings of fact and conclusions of law of the Court for purposes of Rule 52, Fed. R. Civ. P.

Settle judgment on notice.

Dated: December 24, 1974.

/s/ ROBERT J. WARD
U. S. D. J.

Opinion of Ward, D.I.

NOTES

¹ Prior to the institution of this action, Dow advised Mr. Whiting of its intention to recover the amount in question.

² Neither Mr. nor Mrs. Whiting made any other purchase or sale of Dow stock during the relevant time period.

³ § 78p. Directors, officers, and principal stockholders

(a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 781 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 781(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any

Opinion of Ward, D.J.

security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

⁴ The Supreme Court has recently expressed the purpose of this provision:

Congress recognized that short-swing speculation by stockholders with advance, inside information would threaten the goal of the Securities Exchange Act to "insure the maintenance of fair and honest markets." 15 U.S.C. § 78b. Insiders could exploit information not generally available to others to secure quick profits. As we have noted, "the only method Congress deemed effective to curb the evils of insider trading was a flat rule taking the profits out of a class of transactions in which the possibility of abuse was believed to be intolerably great." *Reliance Electric Co. v. Emerson Electric Co.*, 404 U.S. 418, 422 (1972). As stated in the report of the Senate Committee, the bill aimed at protecting the public "by preventing directors, officers, and principal stockholders of a corporation . . . from speculating in the stock on the basis of information not available to others." S. Rep. No. 792, 73d Cong., 2d Sess., 9 (1934). *Kern County Land Co. v. Occidental Corp.*, 411 U.S. 582, 591-2 (1973).

⁵ One court has recently discussed the automatic nature of the rule of § 16(b):

In order to achieve its goals, Congress chose a relatively arbitrary rule capable of easy administration. The objective standard of Section 16(b) imposes strict liability upon substantially all transactions occurring within the statutory time period, regardless of the intent of the insider or the existence of actual speculation. This approach maximized the ability of the rule to eradicate speculative abuses by reducing difficulties in proof. Such arbitrary and sweeping coverage was deemed necessary to insure the optimum prophylactic effect. See *Petteys v. Butler*, *supra*, 367 F.2d at pp. 532-533; *Smolowe*

Opinion of Ward, D.J.

v. Delendo, *supra*, 136 F.2d at pp. 236-237; Blau v. Lamb, *supra*, 363 F.2d at p. 515. The harshness of the rule was mitigated, however, by confining its coverage to a period of six months, thereby ensuring the minimum adverse effect upon valuable, long-term investments and at the same time facilitating easy and certain compliance with the strictures of Section 16(h). The thrust of the statutory scheme thus placed responsibility for meticulous observance of the provision upon the shoulders of the insider. He was deemed capable of structuring his dealings to avoid any possibility of taint and therefore must bear the risks of any inadvertent miscalculation. Cf. Polaroid Corp. v. Casselman, 213 F. Supp. 379, 382 (S.D.N.Y. 1962); see generally, II Loss, Securities Regulation, Ch. 6C, pp. 1040, *et seq.* (2d ed. 1961). *Bershad v. McDonough*, 428 F.2d 693, 696 (7th Cir. 1970).

* It is unquestioned in this case that plaintiff has no power whatever to revest in himself title to his wife's shares of Dow stock.

⁷ Mr. Whiting consistently reported the shares of Dow held by his wife, and the changes in her holdings, without disclaimer.

A163

Final Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[S A M E T I T L E]

This action came on to be tried before the Court, and the evidence having been adduced by the parties, the parties having been heard, and the Court having filed an opinion containing its findings of fact and conclusions of law, dated December 24, 1974, it is hereby

ORDERED AND ADJUDGED that plaintiff Macauley Whiting's complaint in this action be dismissed on the merits; and it is further

ORDERED AND ADJUDGED that defendant The Dow Chemical Company recover of plaintiff on its counterclaim the sum of \$208,203.80, without interest, and that defendant recover of plaintiff the costs of the action.

Dated: New York, New York, Jan. 3, 1975.

/s/ ROBERT J. WARD
Robert J. Ward
United States District Judge

Judgment entered—1-7-75

/s/ RAYMOND F. BURGHARDT
Clerk

(57824)

Copy Received

POLETTI FREISCH PRASHKER FELDMAN & GARTNER

Attorneys for

Date

4-4-75

Time

5:55 p.m.